



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

Appeal Reference: EA/2021/0036

Determined on the papers on 14 July 2021

Before

**JUDGE BUCKLEY
DAVID WILKINSON
ALISON LOWTON**

Between

TINTAGEL PARISH COUNCIL

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

BARRY JORDAN

Second Respondent

DECISION

1. For the reasons set out below the Tribunal dismisses the appeal.
2. The tribunal has issued a separate case management order requiring the Public Authority by 9 September 2021 to either:
 - a. Write to the tribunal to confirm that it has disclosed to Mr Jordan the information in parts 1-7, 12, 13 and 15-17 of the request (as numbered by the tribunal below); or
 - b. Write to the tribunal setting out whether or not it holds any information within the scope of the request and, if so, specifying any exemptions on which it relies to withhold the requested information.
3. The tribunal will then issue further case management directions as appropriate.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-45373-M8Q0 of 11 December 2020 which held that Tintagel Parish Council ('the Parish Council') were not entitled to rely on s 14(1) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner required the public authority to issue a fresh response to the request which did not rely on s 14(1) within 35 days of the date of the decision notice.

Factual background to the appeal

3. The Trebarwith Strand toilets were closed by Cornwall Council in 2016. In April 2016 the Parish Council entered into a tenancy at will agreement with Cornwall Council and took over the facilities to ensure that they were open for the peak tourist season.
4. The Parish Council did not want to continue to run the toilets but reluctantly agreed to accept another tenancy at will for one year from February 2017. They were run by the Parish Council until October 2019 at which point it was unanimously agreed by the Parish Council that the facilities would be returned to Cornwall County Council.
5. The request relates, in part, to that decision, but also relates to questions that Mr Jordan and, he states, other parishioners, have about the Parish Council's finances.

Requests, Decision Notice and appeal

The Request

6. Mr Jordan made the following request to the Parish Council by letter on about 18 March 2020. The tribunal has adopted the Commissioner's approach and added numbers in bold to each part of the request for ease of reference:

This is an FOI from members of the parish of Tintagel who have been trying to get the information listed below for some time, could you please supply in full to following:-

- (1) The last 2 years accounts in full (2017/18 & 2018/19)
- (2) The Last 2 years internal audit reports (2017/18 & 2018/19)
- (3) The Last 2 clerks time sheets
- (4) The last 3 expense sheets for the clerk
- (5) The last 6 months Bank Reconciliation forms

- (6) How many staff are fully employed by the Parish Council? Not self employed
 - (7) Who is G H Auditing and where are they based?
 - (8) Why do the agendas not have the details of income and expenditure included?
 - (9) Why have the minutes not been kept up to date with income and expenditure?
 - (10) Why have members of the public been refused access to the end of year accounts, See AGAR 2017 /2018 and 2018/2019 as reported in the annual return from PKF Littlejohn
 - (11) Why do the December 2019 minutes show a 43.8% of the precept as costs of the toilets?
 - (12) What were the capital Costs?
 - (13) What were the running Costs?
 - (14) Why was a business case for the toilets not approved by the council?
 - (15) Who collected the cash from all the machines at the toilets?
 - (16) Who Checked that the cash received matched the machines counters?
 - (17) Has the VAT issue with the TVC been resolved and if so how much did the council have to pay?
7. The letter was sent by post to the Parish Council at the Tintagel Visitor Centre. The decision to send the letter to the visitor centre is part of the Parish Council's argument that the request was vexatious and is dealt with below. Because it was sent to the visitor centre and the post there was not regularly checked during the pandemic, it was opened by a volunteer on 20 March 2020 but did not reach the Parish Council clerk until 1 April 2020. At that point the Parish Council states that there was no letter in the envelope and that they did not receive a copy until 11 May 2020.
8. Having received no response, Mr Jordan wrote to the Commissioner on 24 March 2020.

The Parish Council's reply

9. The clerk to the Parish Council provided an initial response on behalf of the Parish Council on 11 May stating that ' I shall provide the information requested by close of business tomorrow (or sooner). The accounts are on the PC website under 'reports', along with the list of payments over £500.'
10. The Parish Council supplied a substantive response on 12 May 2020 as follows (the response is in bold):

1. 2 years accounts in full – **not available at present**. The accounts for 2019/20 are on the Parish Website;

2. Last 2 years Internal Audit reports – **not currently available – at office and I am currently self isolating, having been required to do so;**
3. Clerks time sheets – **you are not entitled to this, GDPR prevents;**
4. Expense Sheets for the Clerk – **ibid (3);**
5. Bank Reconciliation forms – **provided at meetings which you attended –payments over £500 listed on website.**
6. **One Member of staff – as you are aware;**
7. **GH Auditing were based in Cornwall, now retired,** in any event, a PC can choose which company it wishes;
8. **Separate appendix freely provided at meetings and issued to all who wish to collect them – appendix because the number of transactions would make the printed agenda too large for notice boards – bank statements are also freely available for inspection if requested – this system was approved and implemented during the ex-Chairman’s tenure and has been the process since that time;**
9. **No persons have been denied access,** the AGAR is on the website and the period of inspection has been observed. Letters will be provided if necessary. The ex-Clerk did request access three years ago but refused to attend at the office to view – correspondence available. The invitation extended was open-ended (not restricted to the inspection period of AGAR) – indeed, I understand that they are still on the website;
10. **This information is on our website under ‘reports’;**
11. Business cases- **not clear precisely what is being sought** - those relating to TVC and Trevena– suggest that you contact ex- Clerk and ex-Chairman; Trebarwith Strand – the ex-Chairman agreed to take these on without a business case (in any event not a legal requirement); Bossiney – purchased by ex-Chairman, Members not advised of conditions – no solicitor employed to act on behalf of the Parish Council (reasons for these actions have not been explained by ex-Clerk, although requested on two separate occasions);
12. **Part automatic, part contractors** – reconciled against machine data – ask ex-Chairman and ex-Clerk, I am sure that they can tell you about this process;
13. **Clerk/ Members and contractors, bank reconciliations;**
14. **Yes,** VAT payments set out in TVC income/ Expenditure. Quarterly payments being made/ reclaimed and an EPOS system, rejected by previous Chairpersons, has been installed to monitor sales, stock and tax liabilities.

11. At the end of the letter the Parish Council stated:

It is the contention of the Parish Council that these requests are vexatious in nature, as confirmed by CALC, following your meeting with them. No further correspondence will be entered into.

12. Mr Jordan formally referred the matter to the Commissioner on 1 July 2020, who exercised her discretion to accept the case for investigation without requiring the Parish Council to carry out an internal review.

The Decision Notice

13. In a decision notice dated 11 December 2020 the Commissioner decided that the Parish Council was not entitled to withhold the information under s 14(1) FOIA (vexatious request). She found that the refusal notice did not comply with s 17 FOIA. The Commissioner required the Parish Council to issue a fresh response to the request that did not rely on s 14(1). The Commissioner was not persuaded on the available evidence that the Parish Council had demonstrated that the threshold for section 14(1) had been reached.

14. In the Commissioner's view, the Parish Council's submission was undermined by a lack of supporting evidence documenting the complainant's alleged behaviour during the weeks and months leading up to the date that the request was responded to and, particularly in the period before it was posted.
15. The description of events demonstrates that the relations between the complainant and the Parish Council had begun to deteriorate prior to the request being made. However, the evidence before the Commissioner indicates that matters did not begin to descend into viciousness until much later.
16. The address of the visitor centre is listed on the Parish Council's website. It is odd that Mr Jordan chose to send his request by post to a building that he knew to be closed when he had previously corresponded by email. Mr Jordan's behaviour in driving to the visitor centre to watch the request be delivered is questionable but the Commissioner did not consider such behaviour alone to be sufficient to qualify as vexatious. The Commissioner did not accept that the request was vexatious simply because Mr Jordan chased a response.
17. The Commissioner is unimpressed that the Parish Council cited the failure to seek an internal review as vexatious. The inadequate refusal notice did not inform Mr Jordan of the correct procedure for seeking an internal review and explicitly states that, 'No further correspondence will be entered into.'
18. The report from the Monitoring Officer at Cornwall Council found that Mr Jordan had breached the Code of Conduct by conducting himself inappropriately at a meeting of the Parish Council but did not find breaches of the Code in respect of more serious accusations of harassment or of seeking undue influence of Parish Council decisions.
19. The Commissioner accepted that the clerk has become Mr Jordan's focus. The letter of 20 March 2020 did appear to be designed to undermine the clerk. This is the only piece of correspondence that the Parish Council was able to provide to support its assertion that a 'campaign of bullying' was taking place at the time of the request. The Commissioner also noted that that letter must be considered against the backdrop of the Parish Council's decision to meet in secret and pass a motion of no confidence in the complainant. Whether justified in the circumstances or not, such a move was always likely to cause considerable damage to the professional relationship. The Commissioner therefore accepted that subsequent correspondence was always likely to be expressed in terms which were more robust.
20. The Commissioner does not consider that even if all the information were available on the website at the time of the request it would be sufficient to render the request vexatious.

21. In summary both parties have provided the Commissioner with explanations as to why they are the only party that has acted reasonably. Neither party has provided sufficient evidence to convince the Commissioner of the righteousness of their position at the point the request was made, but the burden of proof lies with the public authority to justify the stance it has taken. As the Parish Council has not demonstrated that the request was vexatious, it therefore follows that it is not entitled to rely on section 14 FOIA to refuse the request.
22. There is no appeal in relation to the findings under s 17 and therefore it is not necessary to summarise here.

Notice of Appeal

23. The grounds of appeal are, in essence, as follows:
 1. The Commissioner was wrong to conclude that the request was not vexatious.
 2. The Commissioner made erroneous statements and omitted relevant matters.
 3. The request was not properly served because, in law, a recorded delivery letter is not deemed served on the recipient.
24. The grounds of appeal set out the most detailed explanation of the Parish Council's position and therefore we have set them out in greater detail than usual below.

The Commissioner was wrong to conclude that the request was not vexatious

25. The Commissioner has not attempted to secure evidence from the Parish Council and has merely accepted what has been said by Mr. Jordan.
26. Proper consideration of the evidence provided (recordings of radio interviews) show that Mr. Jordan had his own agenda to attack the Parish Council in general and the clerk in particular for a period of several months prior to submission of the FOIA. One member of the public, who had attended several Parish Council meetings of the Parish Council prior to the request, publicly responded to the second interview, in which the clerk was openly slandered. The member of the public stated that she had witnessed the conduct of Mr Jordan at Parish Council meetings over the previous several months, adding that the only aggressive persons at those meetings has been Mr Jordan himself. His conduct toward the clerk was also alluded to. This evidence was apparently ignored by the Commissioner.
27. The fact that Mr Jordan campaigned during his election period in relation to the Trebarwith Strand lavatory issue show that he had a personal agenda from 2017 onwards. It was inappropriate for a County Councillor to attempt to sway a

Parish Council into expending public monies on a loss making venture, particularly where the Councillor has campaigned for personal success on the back of the same and where his own County Council had declined to assist with the retention of the facility.

28. The Parish Council has provided minutes dated 7 June 2017. The Parish Council was mobbed by business owners at the meeting. One of the most aggressive and vociferous attendees was the person who wrote a rude and offensive email to the clerk in February 2020 and who was in contact/discussion with Mr Jordan, who was being copied into emails to the clerk in February 2020. A further agitator was the ex-chairman of the Parish Council who was sanctioned for his unacceptable conduct at the meeting by Cornwall Council.
29. It was agreed at a meeting of 2 October 2019 that the Trebarwith Strand toilet facilities would be returned to Cornwall Council. Between October 2019 and February 2020 several aggressive emails were received by the Parish clerk from [redacted] and [redacted] the latter demanding the provision of monies from the precept for a period of five years from the Parish Council.
30. At the Parish Council meeting on 5 February 2020 Mr Jordan sought to put unacceptable pressure on the Parish Council in respect of the facilities. Mr Jordan would not accept that the Parish Council had made a decision to return the facilities to Cornwall Council as this was felt to be in the best interests of the Parish. The clerk advised Mr Jordan that this decision had been reached in his presence and it would not be revisited for a period of 6 months as defined in standing orders.
31. At a Parish Council meeting in March 2020 Mr Jordan attended prior to the meeting and sought to abuse the clerk and the Chairman of the Parish Council. This was witnessed by many people and the final report of the Cornwall Council Standards Officer deals with his conduct on that night.
32. The decision on 5 February 2020 to decline to give financial support to the proposed CIC angered Mr Jordan and he began to engage in a hate campaign against the Parish Council and the clerk.
33. Mr Jordan had been present at meetings where the issue of the Trebarwith Strand toilets had been discussed many times, and was aware of the Parish Council's views. Knowing those views he chose to engage in a course of conduct that he knew would create difficulties for the Parish Council namely campaigning on the matter and engaging in discussions with people, in the knowledge that the Parish Council could no longer maintain the facilities.
34. Mr Jordan was often accompanied at meetings by a former Parish Council chairman who has led a campaign of harassment against the clerk for over 2 years. The content of the FOI reflects a plethora of information demands made

by the previous chairman, Mr Jordan's friend, who was well aware of the terms and conditions of the clerk's employment because he had been involved in the recruitment process. In one email Mr Jordan states that he is acting on behalf of the previous chairman and a previous clerk. The Parish Council's solicitors are investigating the procurement of Bossiney toilets during the previous chairman's tenure, where there was a breach of the code of conduct. The previous chairman, who owned a campsite without toilets next to the Bossiney toilets, opposed vehemently the closure of the toilets..

35. Mr Jordan was most vociferous at Parish Council meetings and clearly campaigning for the former Chairman. The Parish Council believes that this indicates a definite agenda for the FOI, because it reflects many of the comments articulated by the former Chairman.
36. During the period that the Bossiney toilets were discussed, the former Chairman and his wife habitually attended Parish Council meetings, raised the issue and harangued the clerk as the enquiries were being addressed. Mr Jordan accompanied them to the meetings.
37. In November 2019 Mr Jordan was identified as the person who had passed confidential information relating to discussions between the clerk and Cornwall Council officers. This was complained about by the Parish Council. The procurement of this information and the deliberate dissemination of the same amounts to undermining and vexatious conduct by Mr Jordan.
38. The former chairman and Mr Jordan placed responsibility for the closure of the facility at Bossiney at the feet of the clerk, and engaged in a vitriolic campaign of harassment of the clerk.

The Commissioner made erroneous statements and omitted relevant matters.

39. Mr Jordan was aware that the Tintagel Visitor Centre had been closed for a considerable period of time and had corresponded with the clerk at the stated office address highlighted on the website/agendas/minutes/correspondence. Deliberately using an address that he knew was not the address of the clerk was a deliberate ploy to ensure that the FOI request was not received either at all or expediently. There was a clear sign on the door stating that the visitor centre was closed.
40. Mr Jordan regurgitated the demands of the former chairman and delivered them to a place known to have been closed. There is plethora of correspondence from the former chairman alluding to the closure of the visitor centre.
41. Mr Jordan has stated that the clerk signed for the FOI request. He stated that he had driven to the visitor centre to witness the delivery of the request when he could have posted the document himself. The rear door does not open and there

is no letter box in the front door. No signature could have been obtained at the rear door. The envelope was found in the mail basket affixed to the rear door. Use of the rear door indicates that the facility was locked and empty. The clerk does not have keys. Mr Jordan cannot claim that the clerk signed for the document if he did not see it. He made no mention of the clerk's car being present. It can be proven that the clerk was in another town at the time of the delivery.

42. It is nonsense to claim that the clerk taunted him by using the signature CV19. This was the signature used by royal mail delivery staff who had been instructed not to allow customers to sign and to sign themselves with CV19. The document was found by volunteers in the letterbox.
43. This shows that the conduct of Mr Jordan was calculating and vexatious and his contention false and libellous.
44. In law a recorded delivery letter is not deemed to have been served, and therefore the request was not properly served.
45. It was misleading to refer to the Parish Council permitting volunteers to sift the mail.
46. It was erroneous to state that the Parish Council elected to take ownership of the Trebarwith Strand (village) toilets. Ownership remained at all times with Cornwall Council.
47. No consideration was given to the concept of 'double precepting'. It is abhorrent for a Councillor to advocate that such a burden should be imposed on parishioners. The only people who benefitted were business owners and visitors to the beach. This highlights that Mr Jordan was not working for the parishioners but himself and a small group of business owners. Many of the prospective members of the CIC were people who had sought to bully the Parish Council in an open meeting which had to be abandoned, and consideration was given to calling the police. Mr Jordan was at those meetings and subsequently sought to rely on the support of that group to further his election pledges.
48. Prior to the submission of the request Mr Jordan held meetings with the Trebarwith Strand business owners and acknowledged in an open meeting that he was aware of and had been copied into an aggressive letter by those people to the clerk. He had a leading role within the group.
49. It was erroneous to state that Mr Jordan had personally financed the Trebarwith toilets. They were financed for a period of time from the Community Chest, a County Council Fund.

50. Mr Jordan was not bullied by the Parish Council, substantiated by the Cornwall Council standards officer reports.
51. The Parish Council did not hold a secret meeting. The meeting was open to the public. The matter under discussion was confidential in nature and fell under 'part 2' discussions. Six of the eight councillors were at the meeting. Nobody resigned as a result of the decision made, Mr Dyer resigned later.
52. The Parish Council has never responded crossly and instead raised the matter with Cornwall County standards officer and eventually instructed a solicitor.
53. Mr Jordan publicly vilified the clerk and Councillors were harangued with nonsensical or vitriolic email correspondence by day and night.
54. The request clearly targets the clerk asking for confidential information – salary and expenses/timesheets. This is a cynical attempt to target the clerk.

The ICO's response

55. In summary the Parish Council's response:
 1. Confirmed that some of the requested information was available, on the website or otherwise, to Mr. Jordan (relating to parts 1, 5, 8, 9 and 10).
 2. Provided some information (relating to parts 6, 7, and 11-14).
 3. Explained why some information was not available without reference to any exemptions from disclosure under FOIA (relating to parts 1-4).
 4. Characterised the request as vexatious.
56. On 25 January 2021 Mr Jordan informed the Commissioner that the Parish Council had issued a fresh response to the Request. The Commissioner has not viewed any such response and cannot confirm that the Parish Council has complied with the Decision Notice.
57. The tribunal has no jurisdiction over the Commissioner's investigation pursuant to s 58 FOIA and in any event conducts a full merits review.
58. There does not appear to be any appeal in relation to s 17 and therefore the question for the tribunal is whether the Commissioner erred in law, or in the exercise of her discretion, in her decision that the request was not vexatious for the purposes of s 14(1) FOIA.
59. The Parish Council's arguments are, in summary
 1. The purpose of the request was to discredit the clerk of the Parish Council.
 2. Mr Jordan was acting in concert with others with a similar interest in keeping the toilets open.

3. The Parish Council relies on recordings of radio interviews as evidence of vexatiousness that were not provided to the Commissioner before the Decision Notice was issued.

Purpose

60. The request is from 'members of the parish' and seeks an array of information, the majority of which does not directly relate to the clerk. In this complaint to the Commissioner Mr. Jordan claims that there was a discrepancy of £94,000 in the 2019/2020 accounts and set out the purpose behind the request:

Many of the parishioners are extremely concerned by the action of their Parish Council and want answers, they want to know why their precept keeps going up and the PC keep closing toilets and they are trying to close the Visitor Centre.

61. Accordingly the request has a value or serious purpose in terms of the objective public interest in the information sought and does not represent a manifestly unjustified, inappropriate or improper use of FOIA.

Acting in concert

62. The meeting on 7 June 2017 occurred almost 3 years before the request and Mr. Jordan did not attend. It is not clear what emails Mr. Jordan is said to have been copied in on in February 2020. The Parish Council has provided an email that dated 11 February 2020 from the clerk of the Parish Council, copying in Mr. Jordan, in which she requested copies of minutes for meetings relating to the toilets and the formation of a CIC. The recipient responded, confirming that no minutes were taken as the meetings were informal, and stating:

Following the decision of the Parish Council to close the toilets at Trebarwith is was suggested that those people with an interest in keeping them open explore the possibility of setting up a CIC.

63. That email does not support the ground that Mr. Jordan was acting in concert with others such to make the request vexatious.
64. The Commissioner accepts that others share Mr. Jordan's common interest in keeping the toilets open. There is no evidence that Mr. Jordan was acting in concert with other as part of a vexatiousness campaign against the Parish Council nor the clerk. The Commissioner considers that Mr. Jordan used FOIA as a channel to obtain information that will assist the campaign in which others share a common interest.

Supporting documents

The radio interviews

65. During the first interview on 10 February 2020 Mr. Jordan discussed the ownership and maintenance of the toilets and commented that the Parish Council claim they cannot afford the toilets despite having £173,000. This matter was referenced in a report from Cornwall Council's Standards Officer dated 30 June 2020 ('the June Report') which found no evidence that Mr. Jordan knew the relevant costs and that he believed the information to be true at the time. The interview does not constitute evidence that Mr. Jordan's agenda was to attack the Parish Council and in particular the clerk, nor that it renders the request vexatious.
66. The other two interviews post-date the request and are not relevant.
67. The allegations that in November 2019, four months before the request, Mr. Jordan procured and deliberately disclosed confidential information to the former chairman is not supported by independent evidence. There is no copy of the information in order to assess its relevance to the alleged campaign of slander and harassment against the clerk.
68. The report from the Cornwall Council's standards officer dated 12 August 2020 ('the August report') refers to matters that occurred shortly before the request, specifically an allegation that Mr. Jordan told the clerk to 'shut up' prior to a Parish Council meeting on 4 March 2020. In the decision notice the Commissioner acknowledged the findings in the June Report that Mr. Jordan had breached the Code of Conduct but no breaches were found in respect of the more serious accusations of harassment or seeking undue influence of Parish Council decisions.
69. The June 2020 report found no breach of the Code of Conduct in respect of the following allegations:
1. The Council and the clerk has been subjected to a number of libellous and inaccurate correspondence intending to undermine the clerk;
 2. At a Parish Council meeting on 5 February 2020 Mr. Jordan sought to put unacceptable pressure on the Parish Council.
70. The report acknowledged that Mr. Jordan was entitled to be involved with a local body that is seeking to keep the toilets open as part of his role as Councillor and was entitled to raise the matter at the meeting on 5 February 2020.
71. The June Report found that a letter from Mr. Jordan dated 30 March 2020 breached the Code of Conduct. The Commissioner considered that it appeared designed to undermine the clerk. The request was not solely for information relating to the clerk and there is insufficient evidence of a campaign of bullying at the time of the request to render the request vexatious.

72. The Commissioner does not consider that the finding that the Parish Council held a meeting in secret was a material error and does not impugn her decision on s 14.
73. The findings in the August Report do not meet the 'high hurdle' of vexatiousness.
74. The decision of Cornwall Council dated 15 December 2020 concerns matters which post-date the request.

Procedural matters

75. The Commissioner maintains that the request was received for the purposes of a 10(6)(a) FOIA at some point between 18 March 2020 when the Royal Mail confirmed delivery had been signed for and 20 March 2020, being the date the Parish Council claimed to have discovered the envelope containing the request. The address of the visitor centres remains on the website. There is no error in law or the exercise of the Commissioner's discretion.
76. The Commissioner submits that none of the alleged factual errors are material to her decision on s 14. In some instances the decision notice records the claimant's view and clearly stipulated where such views have not been verified.

Issues

77. The issue for the Tribunal to determine is whether or not the requests are vexatious.

Legal framework

S 14(1) Vexatious Request

78. 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):
79. 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).
80. 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.

81. 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).
82. 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.
83. 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.
84. 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].
85. 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].
86. 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...

87. 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.

88. 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

89. 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.

Evidence and submissions

90. We read and took account of an open bundle and listened to three radio interviews.

Discussion and conclusions

Complaints about the investigation

91. The tribunal conducts a full merits review and therefore can take account of any evidence and submissions before it that it considers relevant, whether or not considered by the Commissioner. The tribunal can make new findings of fact. Complaints about the manner in which the Commissioner conducted her investigation do not fall within our remit.

Scope of the request and the substantive responses already provided

92. The tribunal finds that the following parts of the request do not amount to requests for information and are not therefore within the scope of FOIA:

Part 8: Why do the agendas not have the details of income and expenditure included?

Part 9: Why have the minutes not been kept up to date with income and expenditure?

Part 10: Why have members of the public been refused access to the end of year accounts, See AGAR 2017/2018 and 2018/2019 as reported in the annual return from PKF Littlejohn?

Part 11: Why do the December 2019 minutes show a 43.8% of the precept as costs of the toilets?

Part 14: Why was a business case for the toilets not approved by the Council?

93. Despite asserting that the request was vexatious the Parish Council was able to provide a substantive response to most of the request within a very short period as follows. Although the Parish Council did not specify which exemptions were being relied on, the basis on which it withheld any information is largely clear to the tribunal.

94. The Parish Council has fully answered the following parts of the request:

Part 6: How many staff are fully employed by the Parish Council? Not self employed?

Part 15: Who collected the cash from all the machines at the toilets?

Part 16: Who checked that the cash received matched the machines counters?

95. The Parish Council appears to have answered the following part of the request:

Part 17: Has the VAT issue with the TVC been resolved and if so how much did the council have to pay?

96. The Parish Council refused to answer the following parts of the request on the basis that the information was personal data:

Part 3: The last 2 clerks time sheets

Part 4: The last three expense sheets for the clerk

97. The Parish Council refused to answer the following part of the request on the basis that part of the information was not held and part was already in the public domain:

Part 1: The last 2 years accounts in full (2017/18 & 2018/19)

98. The Parish Council refused to answer the following part of the request on the basis that Mr. Jordan already had the information (possibly relying on the exemption that the information was reasonably accessible to the requestor by other means):

Part 5: The last 6 months Bank Reconciliation forms

99. The Parish Council did not answer the following parts of the request either fully or in part:

Part 2: The last 2 years internal audit reports (2017/18 & 2018/19)

Part 7: Who is G H Auditing and where are they based? **Answered in part.**

100. We have not seen the fresh response so we do not know what information has since been provided or what exemptions are relied upon.

101. We note that recorded delivery is an acceptable method of sending a request, it was sent to an address given on the Parish Council website and therefore was properly served. Further it was ultimately received by the appropriate person.

Burden

102. This is a fairly focussed request although it covers a number of issues. It does have multiple parts, but the request primarily requests documents which, if they existed, would have been relatively easy to locate at the time of the request. Some parts of the request are not requests for information, but do not materially increase the burden of dealing with it.

103. We take the view that this request, taken alone, is not burdensome.

104. When assessing the burden of the request, we have to take into account 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. We cannot take account of conduct that took place after the request except in so far as it casts light on matters that took place beforehand. This is important in this appeal because the parties' relationship appears to have deteriorated significantly after the request.

105. We accept that Mr. Jordan has consistently and regularly challenged the authority in relation to the toilets. We accept that ultimately this appears to have contributed to a breakdown in the relationship between the Cllr Jordan and the existing councillors.

106. We note the finding of the June report:

It is clear from viewing the evidence available that the Subject Member had already been advised that the Parish Council could not be involved in assisting to finance or be involved on this project. This however, would not prevent the Subject Member to continue to seek support from the Parish Council on behalf of his constituents as falls within the remit of the role of a Councillor and the Subject Member is able to seek support for a project to which he is facilitating and in doing so would not, in itself, create a breach of the Code.

107. We agree with this statement. Mr Jordan is entitled to engage in discussions with people and to campaign on the matter, even if it only affects some of the constituents or only business interests in the constituency. However we do accept that the matters raised repeatedly by Mr. Jordan have led to the Parish Council having to spend time dealing with his challenges in meetings and otherwise, when, in their view, they had already reached a final decision on the matter.

108. There is no pattern of similar FOI requests by Mr. Jordan. We have considered the assertions and any evidence before us in relation to requests by other individuals, in particular the previous chairman. There is no evidence before the tribunal to support a finding that Mr. Jordan had been responsible for or involved in any other requests. It is possible that the Council are correct in their assumption that Mr. Jordan was responsible for or involved these requests in some way, but there is insufficient evidence before us to support such a finding on the balance of probabilities.

109. This is not a case where the requestor has submitted numerous overlapping requests to the authority and there is no evidence before us to suggest that Mr. Jordan was relentlessly bombarding the Parish Council with email traffic.

110. Taking all the above into account, we accept that dealing with the request and the related challenges by Mr. Jordan does place a burden on the Parish Council, which is not insignificant. We have concluded that this burden is not disproportionate, taking a holistic approach and in the light of our conclusions below.

Motive

111. The Parish Council argue that Mr. Jordan had his own agenda to attack the Parish Council in general and the clerk in particular for a period of several months prior to submission of the FOIA.

112. The Council relies on the evidence of the radio interview with a member of the public who has attended several meetings of the Parish Council prior to the request. The member of the public, who had recently become a

Parish Councillor, but was not speaking in that capacity, does not state that Mr. Jordan had been aggressive. She states:

I've been going along to the meetings and it certainly wasn't the parish council being bullies or mean, and Barry was at some of those meetings that I was at. So I just felt that somebody should say that actually having been to the meetings and having had the support there should be another side, that there is support and I don't agree with what Barry said.

113. There is also nothing in the interview with the member of the public that could support any finding of any inappropriate conduct towards the clerk before the request. She simply states that Barry had not been very positive about the Parish Council and the clerk in the second radio interview.
114. The first interview is dealt with below. The matters set out in the second interview which took place after the request do not, in our view, impact on our decision, save to the extent that they are dealt with below. Nor does any conduct by Mr Jordan at the meeting in February 2020, and we note how this was dealt with in the June 2020 report.
115. We do not accept that the fact that Mr. Jordan campaigned during his election period in relation to the Trebarwith Strand toilets show that there was any inappropriate motive behind the request.
116. We do not accept, on the basis of the material before us, that there is evidence upon which we could find that the request is a continuation of any inappropriate conduct by the former chairman and his wife.
117. Simply because the claimant shares a common interest with other people or has attended meetings with other people, or that he was vociferous at Parish Council meetings and 'clearly campaigning for the former Chairman' does not provide us with a basis to find that the request is either motivated by other people's inappropriate motives, or is part of any campaign of inappropriate conduct by others.
118. It is possible that the Council are correct in their assumption that Mr. Jordan's request is part of the ongoing conduct of the former Chairman and his wife, or of inappropriate conduct by owners of businesses in Trebarwith but there is insufficient evidence before us to support such a finding on the balance of probabilities.
119. We therefore do not accept that the Parish Council has established on the evidence before us that there was an improper motive behind the request in the sense that it was simply a continuation of the conduct of others.
120. We do not therefore accept that there is evidence which would enable us to conclude that Mr. Jordan was responsible in any way for the conduct at

the meeting on 7 June 2017, or the emails in February 2020 that were described as aggressive.

121. The letters from the bundle said to relate to the breach of confidentiality in November 2019 do not contain anything which could support a finding of improper motive behind this request.
122. We accept that the content of the letter of 18 March 2020 (sent following the request) and the fact that it was sent to the Chairman of the Parish Council and all the other Town Councillors, does to some extent, support the Parish Council's view that there was an attempt to undermine the clerk and we note that the complaint about this was upheld in the June report.
123. Further, from the evidence before us we find, on the balance of probabilities, that the clerk did not receive the letter personally and sign it 'CV19'. We think it unlikely that, having posted a letter via Royal Mail, Mr. Jordan would have known roughly what time it would be delivered and would have waited in his car to see it delivered. We also do not accept, in the light of the description from the Parish Council of the position of the letter box and the doors which open, and the assertion that the clerk was elsewhere at the time, and in the light of the note from the volunteer on the envelope, that Mr. Jordan saw the clerk rip the contents in half and sign the machine 'CV19'.
124. We accept that the respondent's version of events is much more credible, namely that 'CV19' is the replacement for a signature used by postal staff during the Covid 19 pandemic, and that the letter was delivered in the absence of the clerk and found by a volunteer in the postal basket.
125. We accept that the fact that Mr. Jordan appears to have posted the letter to a place which he knew to be closed suggests that he may not have genuinely wanted the respondent to receive the request in a timely way. Further the fact that we have not accepted his version of events does undermine, to some extent, his evidence as to motive.
126. However we note that Mr. Jordan has provided the reasons behind his request, and we accept that this amounts to a genuine purpose or value in the request (see below). Taking this into account along with all the above, we find that the request was not made simply to cause annoyance or disruption at the Council, or as part of any campaign of harassment.

Purpose or value

127. Mr. Jordan has provided calculations which he asserts show that there is a discrepancy of £93,612 in the accounts for 2019/2020 and the AGAR (annual governance and accountability return) for 2018/2019. He also

states that there has been a large increase in the clerk's salary between 2018/2019.

128. He states that the purpose behind the request is that many of the parishioners are concerned about the actions of the Parish Council and 'want answers'. They want to know why their precept keeps going up and the Parish Council keep closing toilets and they are trying to close the visitor centre.
129. We find that there is a clear value in transparency in relation to how a Parish Council spends its money. Further we note that the information that is publicly available does not appear to allow the public to scrutinise fully how the Parish Council's money is accounted for.
130. It certainly cannot be said that there 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 request is aimed at the disclosure of information which, subject to the application of any substantive exception relied on by the Council, ought to be made publicly available.

Harassment and distress

131. We take account of the fact that some distress is likely to have been caused to the parish clerk by the way in which Mr Jordan has acted.
132. In particular we have taken account of the findings of the June 2020 report as to his conduct on 4 March 2020 including the finding that he said 'shut up' to the clerk which, we accept, is likely to have been upsetting for that individual. Further it is likely that the behaviour of Mr Jordan in the context of the breakdown in the relationship between Mr Jordan and the Parish Council has caused distress to the other Councillors.
133. We have listened to the radio interviews. In relation to the first interview the June report has found that Mr. Jordan was stating information which he believed to be true at the time. There is nothing in the interview which could reasonably be described as a harassment or could reasonably cause distress.
134. The request in question is politely worded and reasonably focussed. Even in the light of any distress that has been caused by Mr. Jordan's actions in the past, we cannot see how dealing with this request would be likely to cause any harassment or distress to anyone, although we accept that it is likely to cause irritation.

135. We have considered the evidence before us in relation to the action by other individuals which is said to amount to harassment and there is no evidence before the tribunal to support a finding that Mr. Jordan had been responsible for any other action. It is possible that the Council are correct in their assumption that Mr. Jordan was responsible for or involved in this action in some way, but there is insufficient evidence before us to support such a finding on the balance of probabilities.

Conclusions on whether the request is vexatious

136. We have taken a holistic and broad approach and have looked at the request in the light of the past course of dealings between Mr. Jordan and the Council. We have considered the burden on the Council and the value and purpose of this request. We have looked at Mr. Jordan's motive and any distress that is likely to be caused by the request.
137. We note that the value of a request should not be seen as a 'trump card', but we have balanced the value to the public of this information against the other relevant factors set out above.
138. We do not consider that this request 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, judged objectively. We bear in mind that the hurdle of satisfying the test is a high one.
139. Looking at all these factors we find that the request was not vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.
140. We conclude accordingly that s 14 does not apply and the appeal is dismissed. Any errors of fact in the decision notice were not material to the Commissioner's conclusion.

Next Steps

141. The tribunal has decided, in the light of the Upper Tribunal judgments in **Information Commissioner v E Malnick and The Advisory Committee on Business Appointments** [2018] UKUT 72 (AAC) and **NHS England V Information Commissioner and Dean** [2019] UKUT 145 (AAC), that the consideration of potential further exemptions should be dealt with by this tribunal through further submissions and deliberations rather than, in effect, by remitting the matter to the public authority and, as a necessary consequence, the Information Commissioner.

142. The tribunal was unsure as to whether or not **Malnick** was intended to apply in a 'gateway' appeal such as this one, i.e. when the public authority has either given a NCND response or has relied on s14. However we concluded that the general tenor of **Malnick** and subsequent Upper Tribunal decisions is that the first tier tribunal, once seized, should determine the issue. Pragmatically, the matter is likely to be resolved more quickly if we determine the issue on the basis of further submissions rather than sending it back to the public authority. We have therefore issued appropriate case management directions.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 2 August 2021

Promulgated: 5 August 2021