



Appeal number: EA/2021/0284

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

GARY KRZYZOSIAK

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondents

**Before:
JUDGE ALISON MCKENNA
Rosalind Tatam
Susan Wolf**

Determined on the papers, the Tribunal sitting in Chambers on 3 February 2022

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MODE OF HEARING

1. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of the Chamber's Procedure Rules¹.
2. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 357, plus the Appellant's final submission.

DECISION

3. The appeal is dismissed.

REASONS

Background to Appeal

4. The Appellant requested information from the Civil Aviation Authority ('CAA') on 4 and 16 November 2020, as follows:

'A list of all DTO² training aircraft by The Eshott Flying School Limited'

and

'I would like a copy of the list of Trust group owners of aircraft G-BUL'.

5. CAA responded on 1 December 2020, refusing to comply with the requests on the basis that they were vexatious within the meaning given to that term by s. 14 (1) of the Freedom of Information Act 2000 ('FOIA'). It notified the Appellant that it was refusing to conduct an internal review on 10 December 2020, explaining that it had carried out an internal review of his previous three requests in March 2020, which upheld its reliance on s. 14 (1) FOIA. CAA directed the Appellant to the Information Commissioner.
6. The Information Commissioner issued Decision Notice IC-77797-S1C6 on 7 September 2021, upholding CAA's reliance on s. 14 (1) FOIA and requiring no steps to be taken. The Appellant appealed to the Tribunal.

The Law

7. Section 14 (1) of FOIA provides that:
(1) Section 1 (1) does not oblige a public authority to comply with a request for information if the request is vexatious.

¹<https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

² Declared Training Organisation

8. The Court of Appeal considered the question of identifying vexatious requests in *Dransfield v Information Commissioner* [2015] EWCA Civ 454³, and approved the approach of the Upper Tribunal, reported at [2012] UKUT 440 (AAC)⁴. The Upper Tribunal’s approach was to “*consider the question of whether a request is truly vexatious by considering four broad issues or themes – (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff)*”⁵. It also emphasised the importance of adopting a “*holistic and broad approach*”⁶ to the determination of whether a request is vexatious or not.
9. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

“If on an appeal under section 57 the Tribunal considers -

- (a) that the notice against which the appeal is brought is not in accordance with the law, or*
- (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

10. The burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant. The relevant standard of proof is the balance of probabilities.

The Decision Notice

11. The Decision Notice in this case summarised CAA’s position as being that the Appellant had first contacted it about Eshott Aerodrome in 2018 and that, by the date of its response to these requests, it had received 83 pieces of correspondence from the Appellant, including 15 FOIA requests over two and a half years. (It had also received further correspondence after these requests,

² [Dransfield & Anor v The Information Commissioner & Anor \[2015\] EWCA Civ 454 \(14 May 2015\) \(bailii.org\)](#)

⁴ [IC v Dransfield \[2012\] UKUT 440 \(AAC\) \(28 January 2013\) \(bailii.org\)](#)

⁵ Paragraph 28.

⁶ Paragraph 45.

including from other public bodies contacted by the Appellant such as the police, local authority, and Coroner). The Decision Notice includes extracts from the Appellant's communications to CAA regarding some of its staff.

12. The Decision Notice records CAA's exposition of the regulatory landscape as follows. Eshott Aerodrome is an 'unlicensed' aerodrome and not therefore directly regulated by the CAA. There is a flying school located at the aerodrome, which is subject to CAA's regulatory oversight. The flying school was last inspected by CAA in September 2019 and the CAA confirmed to the Appellant that it was satisfied there has been no clear breach of aviation rules. CAA states it has thus explained the limits of its regulatory role to the Appellant and has corresponded with him outside the framework of FOIA, but the Appellant has continued to insist that CAA take some enforcement action in relation to his concerns, particularly as he understands there to be a new DTO operating which has not been inspected.
13. The Decision Notice acknowledges that the Appellant has strong views and concerns about aviation safety at Eshott Aerodrome and accepts that these requests have serious purpose and value. However, it concludes that the volume of correspondence, especially in the face of CAA's explanation of its limited role, means that that serious purpose and value has been outweighed by the burden placed on CAA by these requests. It concluded that in the context and history of the Appellant's dealings with CAA, these requests would cause an unjustified and disproportionate level of disruption, irritation, or distress to CAA so that it was entitled to refuse to comply with them in reliance on s. 14 (1) of FOIA.

Submissions and Evidence

14. The Appellant's Notice of Appeal dated 2 October 2021 emphasises his wish to challenge CAA and to hold the appropriate people to account. He expresses concern that CAA has labelled him, rather than his requests, vexatious and has answered similar requests from others. He submits that the Decision Notice is one-sided and unbalanced. He appends to his Notice of Appeal photographs of a plane crash about which he is concerned.
15. The Respondent's Response dated 19 November 2021 helpfully categorises the Appellant's grounds of appeal into three distinct areas of challenge to the Decision Notice. The Appellant has not dissented from this categorisation, and we have found it useful to adopt it. The three grounds of appeal are thus: (i) that the finding that the requests were vexatious was wrong; (ii) that the Decision Notice was unbalanced; and (iii) that the public interest favours disclosure of the information requested.
16. The Response resists the appeal and maintains the analysis as set out in the Decision Notice. It is submitted that the pattern of correspondence shows that the Appellant is unwilling to accept anything CAA tells him, and that CAA's responses have simply resulted in further correspondence, demonstrating

intransigence on the part of the Appellant. The three grounds of appeal are resisted on the basis that (i) taking a holistic approach, the test for regarding these requests as vexatious is met. It does not assist the Appellant that a request by another requester has been answered; (ii) the Decision Notice refers to evidence provided both by CAA and the Appellant; (iii) there is a public interest in the information sought but the Appellant's intransigence outweighs it.

17. The hearing bundle contains evidence in the form of a schedule of the Appellant's correspondence with CAA (pages D125 -140). A file note at D124 notes that CAA had previously considered requests from this Appellant vexatious but had responded to a request in October 2020 after a 7-month silence. Thereafter, new requests were made on 4 and 16 November 2020 and CAA regarded these as vexatious, "*indicating a return to the previous pattern of behaviour*".
18. The Tribunal's hearing bundle contains a considerable volume of evidence of the Appellant's concerns and correspondence about aviation safety at Eshott and CAA's previous responses to his concerns.
19. The Appellant did not file a Reply but did send a Final Submission, framed as an "Eshott Timeline" of events running to 14 pages. It did not directly address the issues for the Tribunal in this appeal, although it did emphasise the Appellant's concerns about the aerodrome.

Conclusion

20. As to Ground (i), we agree with the Decision Notice that the legal test for 'vexatiousness' is met by these requests. Looking at the correspondence holistically, there is a clear pattern of the Appellant failing to acknowledge CAA's explanation of its regulatory role and persisting with multiple communications and FOIA requests on a similar theme. As is evident from events in 2020, when CAA responds to a request, it appears to generate an escalation of correspondence from the Appellant. It seems likely that this pattern would continue if CAA answered the Appellant's requests.
21. We do not consider that the 7-month hiatus in early 2020 was sufficient for us to view the requests with which we are concerned here as separate from the earlier pattern, given the similarity of their subject-matter. We see no error of law in the Decision Notice's conclusion that these requests were burdensome for CAA, in view of the volume and frequency of requests of which they form a part.
22. We have seen no evidence that the Appellant has caused distress to CAA staff, but the terms of his correspondence, repeated in the Decision Notice, are sufficient for us to conclude that CAA staff would have been irritated by his repeated suggestion that their failure to take the action he sought was caused

by incompetence. We conclude that the language used constituted the harassment of CAA staff.

23. We agree with the Decision Notice that the Appellant's requests were motivated by his concerns about air safety at Eshott and aircraft using Eshott, and thus have a serious purpose and value. The Decision Notice notes that there is a wider dispute ongoing between the aerodrome and some of its neighbours, and we have seen evidence of this in our bundle, but we accept that the Appellant has genuine concerns about air safety. Nevertheless, the repeated addressing of his concerns to CAA without taking account of the limitations of its role may lessen the value of the serious points the Appellant wishes to raise.
24. As to Ground (ii), the terms in which the Decision Notice is expressed is not a matter for the Tribunal. The Decision Notice summarises the Appellant's position and the CAA's position. We have read the correspondence and find it to be a fair summary. We discern no error of law in this regard.
25. As to Ground (iii), we have accepted that there is a public interest in air safety, as did the Decision Notice. However, we find that it is outweighed in this case by the burden placed on CAA by these requests.
26. For these reasons we dismiss the appeal and confirm the Decision Notice.

(Signed)

JUDGE ALISON MCKENNA

DATE: 8 February 2022

Promulgated on : 11 February 2022