



Neutral citation number

Case Reference: EA/2017/0279

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

Heard on 18 July 2022 by way of the CVP platform

Decision given on 19th August 2022

Before

**TRIBUNAL JUDGE Stephen Cragg QC
TRIBUNAL MEMBER Jo Murphy
TRIBUNAL MEMBER Suzanne Cosgrave**

Between

DARRELL STURMEY

And

INFORMATION COMMISSIONER

Appellant

Respondent

Decision: The appeal is Allowed.

Substituted Decision Notice: Bournemouth Borough Council must respond to requests 4 and 6-10 as described below within 35 days of the service of this decision on the basis that s14(1) FOIA is not applicable to those requests.

**Mr SturmeY represented himself
The Commissioner was not represented.**

REASONS

MODE OF HEARING

1. The proceedings were held via the Cloud Video Platform. The Appellant was unable to attend the video hearing but was able to join the hearing by audio only. The Commissioner did not attend. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way
2. The Tribunal considered an open bundle of evidence and documents comprising pages 1 to 289, together with a bundle of documents that had been before the Upper Tribunal (UT) in the case of *Sturmey v Information Commissioner* GIA/1617/2018 where a decision was authorised to be issued on 2 December 2021.
3. This case was remitted to this Tribunal from the UT in case of *Sturmey v Information Commissioner* GIA/1617/2018 following a successful appeal by the Appellant, from a previous first-tier tribunal (FTT) hearing decision. The circumstances are discussed further below.

BACKGROUND

4. The Appellant worked at the Bournemouth Aviary as a volunteer in 2015, until March 2016 when his volunteering agreement was brought to an end by the Bournemouth Borough Council (the Council). The Appellant challenged the termination of his agreement and raised issues about health and safety, but none of his complaints were upheld by the Council.
5. The Appellant then referred the matter to the Local Government Ombudsman (LGO) who investigated his complaint about health and safety concerns relating to the aviary, but, on 15 November 2016, the LGO found no fault by the Council and did not uphold the complaint.
6. Following this, the Appellant made a total of ten requests for information to the Council. These can be described as follows.
7. **Request 1, 27 November 2016.** This was a request for information about local authority premises at which volunteers worked and whether such premises were

compliant with health and safety law. The Council's response relied on section 12 of the Freedom of Information Act 2000 (FOIA)(costs limits) stating: 'to research all of our volunteering opportunities across the whole Council for an indeterminate time frame would far exceed the 18 hour limit'.

8. It also said a modified request would be given due consideration and noted that such a request could include 'date parameters' and 'specific service area or event'. The Appellant's reply on 28 December 2016 did not include a modified request and the initial request was maintained. The Council's response of 29 December 2016 stated that they now considered the request 'vexatious' and would not enter into further correspondence.
9. The Council's vexatiousness argument relied on various findings including The Appellant's subsequent requests for information and stated that section 17(6) FOIA permitted it to decline to issue a refusal notice 'to any further vexatious or repeated requests on the same or similar topics.
10. The Council's review decision of 13 March 2017 also relied on findings that: complying with the request would be likely to lead to a 'barrage' of further requests, the request was part of a 'personal crusade' linked to the Council's earlier decision to terminate the volunteer agreement, it formed part of an obsessive and unreasonable campaign that lacked a serious purpose, was belligerent and unreasonable in tone and involved unfounded allegations of negligence and lawbreaking.
11. **Request 2, 3 December 2016.** This was a request for Council employment levels over a 10-year period broken down by reference to employment status, one of which related to volunteers. The Council's response on 29 December 2016 was that this request was vexatious. Given the history, it was said that the Appellant would not be satisfied with any response and would submit numerous further inquiries. The request also had the effect of harassing the Council since it involved the Appellant making unfounded allegations of illegality and impropriety.
12. **Request 3, 10 December 2016.** This was a request for information about the 'date/time' when the Council would comply with a 'bird flu' declaration and associated requirements imposed by DEFRA. With this request, the Appellant advised the Council to take certain actions at Bournemouth Aviary. On 29 December

2016 the Appellant informed the Council that DEFRA ‘made the order for compliance to apply between 6 December 2016 and 6 January 2017. On the same date, the Council informed the Appellant they had concluded that his request was vexatious. His health and safety complaints at the aviary had already been comprehensively addressed. The Council relied on the same reasons as given on 29 December 2016 in respect of request 2.

13. **Request 4, 17 January 2017.** This was a request for information about criminal charges against, and convictions of, Council officials for ‘breaking the very laws they have a duty to enforce’. On 28 March 2017 the Council determined the request as vexatious as it contained some of the typical key features of a vexatious request referred to in the ICO guidance (the features in question were not identified).
14. **Request 5, 16 February 2017.** This request said it was made in the Appellant’s capacity as a ‘stakeholder representing Theresa May, Prime Minister and Matthew Taylor to conduct an investigation across Modern Employment Practices. This appeared to be a similar request to request 2. The Council’s response stated that section 17(6) FOIA permitted the council to issue a refusal notice to any further vexatious or repeated requests on the same or similar topics.
15. **Request 6, 25 June 2017.** This request sought the numbers of fire extinguishers at Council buildings, the proportion of extinguishers compliant with health and safety laws and details of the last inventory of such fire extinguishers. The Council’s response of 11 July 2017 concluded that this request related to the same topics as earlier requests and contained some of the features of a vexatious request as set out in ICO guidance. The authority said it would not respond as its position remained unchanged.
16. **Request 7, 12 July 2017.** This sought information about the use of cash that must have been saved by the authority’s failure to carry out fire extinguisher checks between 2003 and 2016. The Council’s response was that it would not respond to further vexatious or repeated requests.
17. **Request 8, 14 July 2017.** This sought information about a change in the colour of the paint used by the Council to paint lighting poles. The Council’s response was that it would not respond to further vexatious or repeated requests.

18. **Request 9, 14 July 2017.**¹ This sought information about the number of council buildings in the BH1 post code area that could be used for residential purposes, broken down by reference to those which could be sold and those which could be converted. The authority's response was that it would not respond to further vexatious or repeated requests.
19. **Request 10, 14 July 2017.** This request was said to have been made in the Appellant's capacity as a stakeholder for the 'Taylor Review' and sought information about the profile (i.e., proportionate make-up) of Council staff according to employment status, including volunteers. The Council's response was that it would not 'respond or conduct an internal review in relation to this new request as its position remains unchanged'.
20. On 29 March 2017 the Appellant made a complaint to the Information Commissioner regarding the Council's handling of his fourth request for information. On 17 July 2017 he submitted a further complaint with regard to the last six requests. The Appellant did not make complaints about the first three complaints and details are included above for the purposes of context only.
21. The Commissioner's decision notice was issued on 1 November 2017. The Commissioner decided that the Council's decision to apply section 14(1) FOIA to those requests complained about was correct and that the Council was not obliged to issue refusal notices for those requests in accordance with section 17(6) FOIA. The Council was not required to take any steps.

THE RELEVANT LAW

22. By section 1 of the Freedom of information Act 2000 (FOIA) there is general right of access to information held by public authorities: -
 - (1) Any person making a request for information to a public authority is entitled— (a) to be informed in writing by the public authority whether it

¹ We have numbered the requests as was done in the UT permission and substantive decisions but note that the IC decision notice and original FTT decision, has requests 9 and 10 reversed.

holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14 ...

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

23. Section 14 FOIA deals with vexatious or repeated requests: -

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

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

24. Section 17 FOIA deals with refusals of requests: -

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which— (a) states that fact, (b) specifies the exemption in question, and (c) states (if that would not otherwise be apparent) why the exemption applies ...

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where— (a) the public authority is relying on a claim that section 14 applies ...

25. The Court of Appeal case of *Dransfield v Information Commissioner and another Craven v Information* [2015] 1 W.L.R. 5316 dealt with the interpretation of section 14 FOIA and what is meant by the term ‘vexatious’. The UT in the Appellant’s appeal cited the following passage from the Court of Appeal: -

61... agree with the instinctive approach of the FTT that there must be some limits on the ability to look at past dealings in this situation. Even if the requester has made vexatious requests in the past, there must always be the possibility that,

on this occasion, the requester, like Matilda's last request in Hilaire Belloc's poem, may be making a request that needs to be heeded, and that the request is for information that ought to be disclosed to achieve the statutory objective. The requester is after all exercising an important statutory right.

26. The Court of Appeal also said this in relation to the interpretation of the term: -

68. ...the UT 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...

...

70. In responding to any request, the authority has to exercise its judgment in good faith in the light of all the information available to it. It is always open to any requester who is dissatisfied to ask the IC to review its decision or to go to the tribunal.

...

72. Before I leave this appeal I note that the UT held [2012] UKUT 440 AAC at [10] that the purpose of section 14 was "to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA". For my own part, I would wish to qualify that aim as one only to be realised if the high standard set by vexatiousness is satisfied. This is one of the respects in which the public interest and the individual rights conferred by FOIA have, as Lord Sumption JSC indicated in *Kennedy v Charity Commission (Secretary of State for Justice and others intervening)* [2015] AC 455 para 2 above), been carefully calibrated.

THE APPEAL

27. The Appellant exercised his right to appeal, and, in summary, his grounds of appeal are as follows: -

- (a) The Council were classifying all of his FOI requests as vexatious, when they were made in the best interests of the public, Council employees and volunteers and after consulting others.
 - (b) Their refusals of his requests relating to employee/workforce profiles compromised his position as “stakeholder” in connection with Taylor Review on modern day employment practices.
 - (c) His dealings with the Council, the LGO and the Respondent have exposed serious shortcomings with regards to the impartiality and independence of “the system”.
28. On 18 April 2018 the FTT heard the appeal and decided that the ‘requests that were the subject of his complaints were properly treated as vexatious requests...’.
29. The Appellant then exercised his right of appeal to the UT. Permission to appeal was granted on 20 July 2018. There was quite a delay until the substantive appeal was heard by the UT and the decision issued on 2 December 2021.
30. Essentially, the UT said that the FTT had provided inadequate reasons for finding that the requests made by the Appellant were linked with his sense of grievance about his treatment by the Council when he had been a volunteer at the aviary. The UT directed that the case be reheard by a differently constituted FTT panel and emphasised that its decision did not necessarily mean that the new panel would reach different conclusions to the first.

THE HEARING

31. Neither the Commissioner nor the Council provided any further submissions to the Tribunal to support the view that requests had been vexatious for the purposes of s14 FOIA. The Appellant had difficulty in accessing the CVP hearing and eventually was able to attend by audio link only. The Tribunal was able to hear clearly the submissions he made, and the answers given to the Tribunal’s questions.

32. The Tribunal asked the Appellant a number of questions about the requests he had made. He told us that in general the requests had been motivated by contact with friends and relatives and he was making requests for information for the public good. He made it clear to us that he was involved in a lot of local voluntary work and told the Tribunal about some of this work.
33. We noted that there had been requests at the start of 2017 in January and February, and then there was quite a long break until a series of requests in June and July. The Appellant explained that this was the time of the year that he was most involved with wildlife protection work in the area where he lives (the New Forest) which took up a lot of his time.
34. We asked him why he had not pursued the refusals to answer requests 1-3 to the ICO, when it was clear from correspondence from the Council that this was an option. The Appellant explained that he had not thought it worthwhile to take the requests further, and that he did not fully understand the process. He had received a long refusal letter from the Council. He just wanted the Council to do the right thing but had later become more aware of the work of the Commissioner and so pursued subsequent requests through complaints to the Commissioner.
35. The Tribunal noted that request 5 appears to be a repeat request to request 2. Both concern staffing levels at the Council between 2006 and 2016. However, we noted that request 5 starts with following preamble: -

I am a Stakeholder representing Theresa May, Prime Minister and Matthew Taylor to conduct an investigation across Modern Employment Practices. The investigation will form the 'Taylor Review'. I have been invited to attend a detailed discussion on Tuesday 7th March 2017 which will include factoring the information disclosed by Bournemouth Borough Council, therefore please could you supply me in timely fashion with the following information to assist the Taylor Review.

36. We asked the Appellant about this. He believes he did represent Theresa May and Matthew Taylor and that he had an official role in their investigation. We explored this further, and the Appellant said that he had contributed to the consultation which was part of the investigation. He had decided to carry out local research of his own volition into the Council's employment practices which he could then submit to the

investigation. He thought that his role meant that the Council would be more likely to respond to the request. We note that request 5 was made at a time when the response to the internal review into request 2 was still outstanding.

37. We asked the Appellant about request 8 which concerned the change of the colour of lighting poles in the Council's area. The Appellant said that he was interested in colour coding, and that the original green colour had matched that of the aviary where he had volunteered, and that he wanted to understand, in that context, why the colour had been changed.
38. We asked the Appellant about request 10 which concerned the possible use of council buildings in the BH1 area for accommodation purposes. He told us that he was interested in the issue of providing sufficient residential accommodation and the government policy of building more but thought there was a lot of Council property which could potentially be used to provide accommodation.
39. We asked the Appellant whether he had continued to make requests after July 2017, and he told us that the Council's responses had dissuaded him from doing so.

DISCUSSION

40. Our conclusion is that other than request 5, the requests 4-10 (the only requests in issue in this case) made by the Appellant are not vexatious for the purposes of s14 FOIA. As the UT pointed out, there is very little obvious link between the requests, which cover a number of areas, and the Appellant's previous role as a volunteer at the aviary.
41. Essentially, the Appellant made seven requests for information over a period of six months. If the first three requests are also considered the figure is ten requests in eight months. Although it is difficult to ascertain much of a value in some of the requests, it is clear that the Appellant thought that they were all important and were all designed to obtain information about the Council's work. The information that we have is that the Appellant has not continued to make requests of the Council.

42. As mentioned above, we agree with the UT that it is difficult to ascertain a link, or much of a link, between the requests and the Appellant's dissatisfaction with his treatment when he was a volunteer at the aviary. We are not able to provide the further reasoning to reach conclusions about the existence of a link that the UT indicated might be possible. For example, it is difficult to see any link between requests about the proportion of volunteers in the Council's workforce and the Appellant's complaints about the aviary. Likewise, it is hard to see how a request about whether Council buildings could be used as residential accommodation, could be said to be linked with issues about the aviary.

43. We do accept that the Appellant's requests over a period of time demonstrated a degree of persistence into the Council's affairs, but we do not think that the seven requests we are concerned with, made over a period of eight months, can be described as a personal crusade or a barrage of requests, as the Council has sought to do in its response to the Appellant. We do not think that the requests placed an unreasonable burden on the Council, and we do not think that the Appellant's series of requests had reached the stage of an unreasonable campaign which lacked any serious purpose at all. As the Appellant said, his purpose was in some instances to hold the Council to account for some of its practices and seeking information in others.

44. We understand that it can be frustrating for a public authority to have to answer a series of requests from one person, and our decision does not rule out the possibility that future requests or a series of requests from the Appellant could be said to be vexatious. However, we do bear in mind what the Court of Appeal said in the *Dransfield* case to the effect that the rights given under the FOIA are important statutory rights for individuals and that a high standard must be met if a request is to be found to be vexatious. To repeat what the Court of Appeal said at paragraph 68: -

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.

45. In our view, that hurdle has not been satisfied in this case in relation to request 4 and requests 6-10.

46. However, we reach a different conclusion in relation to request 5. In essence, this was the same request made as the request set out in request 2. We also note that at the time request 5 was made, request 2 was still subject to an internal review. To make the same request at the time request 5 was made was unduly onerous and unnecessary and in our view it was vexatious. The fact that the Appellant believed he had some sort of official sanction from the Taylor Review at the time he made request 5 does not alter our view on this point: it was still essentially the same request at a time when the first request (Request 2) had not been resolved by the Council.

47. On the basis of this, the appeal is allowed in relation to request 4 and requests 6-10, and a decision notice substituted in the above terms (see start of decision) in relation to these requests. To be clear, our decision does not necessarily mean that the information requested will be disclosed, just that the Council cannot consider the requests as vexatious. There may be other exemptions upon which the Council wishes to rely which would permit it not to disclose the information (which could be subject to a further complaint to the Commissioner).

48. Thus, the Tribunal requires the Bournemouth Borough Council to take the following steps to ensure compliance with the legislation: -

- **Reconsider the Appellant's requests afresh on the basis that, in relation to request 4 and requests 6-10 as described above, these requests are not vexatious for the purposes of section 14 FOIA.**
- **The Bournemouth Borough Council must take these steps within 35 calendar days of the date of this decision and inform the Appellant of the outcome from taking those steps within the same time period.**

49. Failure to comply may result in the Tribunal making written certification of this fact to the Upper Tribunal, in accordance with rule 7A of the First-tier Tribunal (General Regulatory Chamber) Rules² and may be dealt with as a contempt of court.

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1006547/consolidated-fft-grc-rules-21072021.pdf

50. As the Council is not a party to the appeal it must be sent a copy of this decision.

Signed Tribunal Judge Stephen Cragg QC Date: 18 August 2022