



Case Reference: EA/2021/0160 and EA/2021/0292

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard on: via the CVP platform on 18/19 October 2022

Decision given on: 11 November 2022

Before

TRIBUNAL JUDGE Stephen Cragg KC
TRIBUNAL MEMBER Naomi Matthews
TRIBUNAL MEMBER Paul Taylor

Between

(Appeal No. EA/2021/0160)

PAUL ELWORTHY

Appellant

and

(1) THE INFORMATION COMMISSIONER
(2) THE ROYAL BOROUGH OF GREENWICH

Respondents

Appeal No. EA/2021/0292

THE ROYAL BOROUGH OF GREENWICH

Appellant

and

(1) THE INFORMATION COMMISSIONER
(2) PAUL ELWORTHY

Respondents

Decision: The appeal in EA/2021/0160 is Dismissed and the appeal in EA/2021/0292 is Allowed.

Substituted Decision Notice: No substituted decision notice in EA/2021/0160. In EA/2021/0292 a substitute decision notice is issued to the effect the London Borough of Greenwich was correct to rely on s14(1) of the Freedom of Information Act 2000 in relation to the requests in that case.

**Mr Elworthy represented himself
The Commissioner was not represented.
The London Borough of Greenwich was represented by Ms Ivimy**

REASONS

MODE OF HEARING

1. The proceedings were held via the Cloud Video Platform. The parties joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way
2. The Tribunal considered two agreed open bundles of evidence comprising over 1100 pages, additional documents from the parties and skeleton arguments/written submissions from the parties.

INTRODUCTION

3. These are joint appeals brought under s. 57 Freedom of Information Act 2000 (FOIA) and concern whether the Royal Borough of Greenwich (the Council) was entitled under s. 14(1) FOIA to refuse to respond to two requests made by Paul Elworthy in June 2020 on the ground that the requests were vexatious.
4. Mr Elworthy is Appellant in EA/2021/0160. Mr Elworthy appeals a decision of the Information Commissioner (the Commissioner) dated 23 June 2021, concerning a request dated 18 June 2020. The request sought information about the use of an email address by a Council official to deal with a complaint made by Mr Elworthy. The Council refused the request as vexatious on 14 July 2020 and upheld the response on internal review on 15 July 2020. The Commissioner found that the Council was entitled to refuse the request because it was vexatious within the meaning of s. 14(1) FOIA.

5. The Council is Appellant in EA/2021/0292. The Council appeals a decision of the Commissioner dated 13 September 2021, concerning a series of six requests made between 17 February and 15 June 2020. The requests sought information about expenses claimed by the Council's Director Human and Legal Resources, John Scarborough. The Council provided information in response to the first five requests but refused the sixth on 20 June 2020 as vexatious. The Council upheld the decision on internal review on 14 July 2020.
6. The Commissioner, in reaching his decision, proceeded on the basis that the relevant request was dated 17 February 2020; he found that the Council had not provided sufficient evidence to discharge the burden of proof that the request was vexatious under s. 14(1) FOIA.
7. In response to the Council's Grounds of Appeal, the Commissioner offered to reconsider the matter by reference to the request of 15 June 2020, or in the alternative that the appeal should proceed before the Tribunal which could consider the relevant issues afresh in exercise of its full merits jurisdiction. Mr Elworthy objected to reconsideration and the appeal comes before the Tribunal, with the relevant request on appeal being the final request in the series, dated 15 June 2020.

The email request

8. On 18 June 2020, Mr Elworthy wrote to the council and requested information in the following terms:-
 1. Please confirm how many times [name of officer A redacted] has previously used her personal Royal Borough of Greenwich email account as opposed to a shared inbox when dealing with customers complaints.
 2. Please supply all internal emails from [name of officer A redacted] email dated 01/03/2019 at 8.35 titled Response letter. All corresponding emails to include from [name of officer B, and Officer C redacted], Adults-Casework and [name of officer D redacted].
9. The council responded on 14 July 2021, confirming to the complainant that it was refusing his request under section 14(1) FOIA. Mr Elworthy contacted the Commissioner on 25 July 2020 to complain about the way his request for information had been handled.
10. The decision notice is dated 23 June 2021. The Commissioner records as follows:-

19. The council has advised the Commissioner that it regards the background and history of the request to be relevant to its decision to apply section 14(1) to the complainant's request.

20. It has explained that there are 'two broad groups of issues' which the complainant has had with the council; one issue relates to planning matters that have affected a property which he has an interest in, and the other issue relates to the care received by a relative in 2016 (which the council states was dealt with by the Local Government Ombudsman in 2018).

21. The council has said that subsequent to these issues being raised, the complainant has made personal accusations and allegations against various officers at the council. It states that he has not complied with the council's request that he limit all his contact to one named officer, and that he has used a number of twitter accounts to make abusive tweets to the council and individual councillors. The council also made reference to legal cases and financial claims which the complainant has made against the council.

22. The council also states that the high level of correspondence it has received from the complainant represents the pursuit of issues beyond the point that a fair minded member of the public would consider reasonable; it claims that this level of correspondence on the same, or similar, subject matter can be readily characterised as obsessive. It goes on to say that it has also had the effect of harassing the council and its officers, and has diverted the latter from their primary duties.

23. It is the council's view that the complainant is dissatisfied with its handling of the issues which have arisen, and that the request under consideration is a continuation of that dissatisfaction. It has said that it believes that the request is designed to cause disruption or annoyance due to the ongoing complaints that the complainant has with the council, and that he is using the FOIA regime to reopen issues already raised. The council argues that the impact of dealing with the request would be unjustified and disproportionate in relation to its purpose and value...

11. The Commissioner's decision in relation to s14 FOIA can be taken from the decision notice as follows (after the Commissioner indicated that the issue of an officer allegedly using a personal email address had been dealt with):-

32. The Commissioner is satisfied that her investigation into the data protection concern raised by the complainant would have already considered all the relevant information necessary to form a view on the adequacy of the council's processes. Furthermore, the complainant was notified of the outcome of this investigation and the action which was to be taken. However, despite this, it would appear that the complainant has continued to request that the council provide information relating to this matter, and the officer involved.

33. Serious purpose and value will often be the strongest argument in favour of the requester when a public authority is deliberating whether to refuse a request

under section 14(1). The Commissioner's guidance states that the key question to consider is whether the purpose and value of the request provides sufficient grounds to justify the distress, disruption and irritation that would be incurred by complying with that request. It states that this should be judged as objectively as possible -would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.

34. In this instance, the complainant may, or may not, have valid concerns about how the council has dealt with the two issues referred to in paragraph 20 of this decision notice. However, with regards to this particular request, the Commissioner considers the council's argument that the complainant is attempting to persist with an issue which has already been comprehensively addressed to carry some significant weight.

...

38. Having considered the arguments put forward by the complainant and the council, the Commissioner considers this particular request to be a continuation of the complainant's pursuit of a matter that has been subject to at least one independent investigation, and which has been fully dealt with, and concluded.

...

40. As a result, the Commissioner is satisfied that, in respect of this particular request, the council was entitled to apply section 14(1) of the FOIA.

The expenses request

12. On 17 February 2020, Mr Elworthy requested information from the Council as follows:-

Please supply me under the Freedom of Information Act all expenses claimed by your head of legal Department for the last five years.

13. As recorded by the Commissioner in the subsequent decision notice dated 13 September 2021, the Council 'provided some of the requested information, but ultimately on 20 June 2020, it relied on section 14... not to provide any further information'.

14. Following an internal review, the Council wrote to Mr Elworthy on 14 July 2020 and stated that it upheld its position, and Mr Elworthy referred the matter to the Commissioner. As in the previous decision notice the Commissioner referred to the 'two broad groups of issues' that Mr Elworthy had with the Council. The Commissioner went on to describe the Council's case as follows (not, of course, accepted by Mr Elworthy):-

18. Arising from these complaints are numerous other allegations and conspiracy theories relating to officers and Councillors. The complainant has accused the public authority's Director of Legal Services, of pursuing a personal vendetta against him and of being corrupt (this appears to relate to a previous FOI about claim forms which omitted a signature on one claim), as well as various other allegations of incompetence against numerous other officers, including the Chief Executive and other of the public authority's officers.

19. The complainant resurrects similar complaints periodically which include personal accusations and unfounded allegations against officers of the public authority.

20. Despite being subject to contact restrictions within the public authority, the complainant has actively chosen to ignore them and has written to confirm he will not follow them and has set up numerous Twitter accounts to send abusive tweets to the public authority and individual Councillors.

21. The complainant has also made several legal cases against the public authority (he currently has two money claims against the public authority) and on one occasion, tried to give back money it had paid for one of the claims to try and continue the legal action in court.

22. The complainant's recent claim is for money that the public authority had voluntarily agreed to pay in response to a crack in a wall in his property.

23. The complainant has also threatened legal action for adverse possession and for breach of data protection and has made further FOI requests on the same matter.

24. The complainant has demanded that the public authority reimburse him for the cost of a solicitor he instructed for advice on a subject access request he submitted to the public authority.

15. The Council provided the Commissioner with an Excel spreadsheet which set out the level and volume of correspondence received by the Council from Mr Elworthy and the Council told the Commissioner that this level of correspondence represented the pursuit of issues beyond the point a fair minded member of the public would consider reasonable and is obsessive. The Commissioner went on to explain:-

27. The public authority considers that this level of correspondence has had the effect of harassing the public authority and its officers and diverting officers from its primary duties. This is demonstrated by the public authority arranging numerous meetings with senior officers and other officers from various directorates to consider the issues raised by the complainant.

28. The request is designed to caused disruption or annoyance due to the ongoing complaints he has with the public authority and using the FOIA regime to reopen issues already raised.

29. The complainant is clearly dissatisfied with the public authority and this present request is in its view a continuation of that dissatisfaction.

30. Finally, as can be seen from the Excel spread sheet the public authority has continued to consider further requests on the same matters as set out at points 1 and 2 and other related correspondence.

16. On the 15 June 2021, the Commissioner asked the Council to provide any (further) documentary evidence that supported its above allegations and submissions. In reply, the Council on 21 July 2021, provided the Commissioner with a bundle of documents which it said met the Commissioner's request. The Commissioner recorded Mr Elworthy's submissions as follows:-

33. The public authority is correct that a complaint was registered with the Ombudsman and was investigated and found in his family's favour. Whilst this process and a preceding complaint did generate a significant amount of correspondence the amount was justified in the circumstances.

34. The public authority's solicitors wrote to him stating that he had no planning permission on his garage, and he was to infill his garage door. This then resulted in a county court claim being issued against the public authority. They then spent the next 18 months defending the claim before trying to settle before it went to court. He returned their payment as they had not provided him with the correct amount.

35. The public authority alleged that he had had no planning permission for his garage. As a result he engaged a solicitor who confirmed that planning permission had been granted by the public authority and that they had no legal rights to force him to infill the garage door. The cost for this advice was £600.00. He wrote to the public authority and requested that they refunded his legal fees due to them writing to him with factually incorrect information. Unfortunately they refused. This resulted in many letters and emails being sent to the public authority. He sees no reason why he should be at a financial disadvantage due to their (alleged) incompetence.

17. The Commissioner decided that as most of the information from the Council post-dated the request of 17 February 2020 then it did not assist the Commissioner in establishing whether Mr Elworthy's request of that date was vexatious:-

39. Regarding the interaction arising between the two parties, concerning the treatment of the complainant's close relative both concur that this generated a significant amount of correspondence. The complainant says that the volume

and type of correspondence was reasonable in the circumstances. The public authority disagrees and says that the volume and type of correspondence was unreasonable. However the public authority, which bears the burden of proof for its assertion that the complainant's request was vexatious has not provided the Commissioner with evidence (as to volume and type) that supports its contention that the correspondence was unreasonable as it suggests.

40. Similarly both parties agree that there was a property dispute between the two which resulted in litigation at least being commenced. It appears that the public authority initiated the dispute when it alleged that the complainant had contravened building regulations. Again, the complainant states that the correspondence generated by this dispute was reasonable in the circumstances and his desire to recover his legal costs was likewise reasonable. Though the public authority says the opposite (about the volume and type of correspondence) it again has not provided the Commissioner with sufficient evidence to support its contention notwithstanding that it bears the burden of proof when it seeks to rely on section 14.

THE STATUTORY FRAMEWORK

18. Section 1(1) and (2) FOIA provide:-

(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 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.

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

20. In determining whether a request is vexatious within the meaning of s. 14(1) FOIA, there is no single checklist and the matter must be looked at holistically. See *Dransfield v IC* (CA) [2015] WCA 454 at paragraphs 18-20 and 68-70 and *UTT* [2012] UKUT 440 (AAC) at paragraphs 24-39.

21. The Commissioner has given guidance on s. 14(1) FOIA and lists indicators of vexatiousness which include: abusive or aggressive language; burden on the authority; personal grudges; unreasonable persistence; unfounded accusations; intransigence;

frequent or overlapping requests; scattergun approach (including “fishing” requests); and futile requests (including where the issue has already been subject to independent investigation).

22. The question whether a request is vexatious should be determined as at the date of the request and the response to it. Evidence which post-dates the request may be relevant but only insofar as it “throws light on the true purpose and circumstances concerning the request at the time it was made”: see *Yeong-Ab Sob v IC* [2016] UKUT 0249 at paragraph 70.

THE APPEALS

The email request appeal

23. Mr Elworthy’s appeal was received on 29 June 2021 and disputed that his request had been burdensome and blamed the Council if he had caused it an amount of work. He alleged that s14 FOIA was being used as a ‘tool to conceal their corruption’. He accused the director of legal services of lying about providing him with information, and that personal email accounts were deliberately being used by council officers ‘to avoid an ICO investigation’. In response the Commissioner sought to uphold the decision notice.

The expenses request appeal

24. The Council’s appeal of 11 October 2021 stated that:-

(1) The Commissioner wrongly identified that the relevant request was the request dated 17 February 2020. The request of 17 February 2020 was the first in a series of requests on the same topic, namely expenses claimed by the Director of Legal Services. Mr Elworthy replied and provided information in response to further requests on the same topic dated 10 March, 7 April, 20 April and 18 May 2020. It was only in response to a yet further request on the same topic dated 15 June 2020 that The Council relied on s. 14(1) FOIA. The Commissioner should have found that the relevant request was that dated 15 June 2020.

...

(3) Considering the request dated 15 June 2020 and facts as at 29 June 2020/14 July 2020, the Commissioner should have concluded that the Appellant was entitled to treat the request as vexatious under s. 14(1) FOIA, having regard to:

(a) the motive of Mr Elworthy, which the Appellant submits was to further his disputes with, and to harass, the Appellant and an individual named officer ; (b) the number, pattern and nature of the sequence of requests and history of communications, and the burden on the Appellant; (c) the lack of value or public interest purpose of the request; and (d) the self-evident harassment of and distress to staff arising out of Mr Elworthy's conduct and unsubstantiated allegations.

25. The Commissioner was of the view that the Council had not made it clear that its decision related to the 15 June 2020 request, but was content to reconsider the case on that basis. If that was not the way forward then it would be up to the Council 'to provide sufficient evidence and arguments to now persuade the Tribunal in carrying out its full merits review that the request which is the focus of this appeal is the June 2020 request....'
26. Mr Elworthy submitted that his concerns about the Council and its officers justified the requests that he had made about expenses.

THE HEARING

27. John Scarborough is the Director of Legal and Human Resources for the Council and made a written statement for the hearing and gave oral evidence.
28. His witness statement explains the background (from the Council's point of view) of Mr Elworthy's interaction with the Council prior to the two requests as follows:-

Mr Elworthy first lodged a complaint with Adult Social Care in October 2016, whilst his late mother, Doreen Elworthy was receiving care from the Council and was admitted and re-admitted to hospital on several occasions. Subsequently, Mrs Elworthy died on 28th December 2016 and Mr Elworthy complained about the care she had received immediately prior to her death. His complaint was levied at both the Council and the relevant NHS trust. Efforts were made to resolve this complaint at an informal level but without success. The complaint was escalated through formal processes, but Mr Elworthy did not comply with requests to set out the detail of his complaint in a manner that would enable it to be properly processed. In addition, Mr Elworthy had contact with several senior officers within the Council's Health and Adult Services Directorate who sought to assist in the resolution of his Complaint.

... Mr Elworthy complained to the Local Government & Social Care Ombudsman ("LGO") who initially decided not to investigate on the basis that Mr Elworthy had not exhausted the Council's complaints procedure. However,

the LGO ultimately agreed to investigate and accepted that the Council's extensive attempts to find a resolution had reached an impasse.

The LGO's final decision was issued on 7 November 2019 and some findings were made against the Council in relation to the care provided to Mr Elworthy's mother before her death. The Council accepted the LGO's recommendations to apologise to Mr Elworthy and his brother and make a payment of £250 to each to them as a symbolic acknowledgment of the failings in relation to the care of their mother. The Council also agreed to explain how it intended to prevent a reoccurrence of such failings in the future.

The Ombudsman declined to investigate some other aspects of Mr Elworthy's complaint, including a complaint about the way that the Council handled a safeguarding issue....

Mr Elworthy did not accept the LGO's decision of 7 November 2019 and sought a review. The LGO subsequently on 28 May 2020 decided to uphold the decision and that no further action was required.

In February 2019 Mr Elworthy also complained about care given to his aunts. That complaint was handled by HAS and a response sent by the Director of HAS, Simon Pearce. Mr Elworthy did not accept the outcome of the complaint and continued to correspond on the issue and make further complaints about the response to his correspondence.

In November 2019 Mr Elworthy made a SAR for information dating back to 2016 from a number of different departments, including Health and Adult Services.

On 17 December 2019, Mr Elworthy raised three complaints with the Council's Chief Executive's office concerning (1) the way the Council had dealt with a subject access request he had submitted, (2) correspondence received from Bevan Brittan solicitors acting for the Council in connection with its Housing Delivery Programme concerning Mr Elworthy's garage and (3) an allegation that a criminal offence had been committed in relation to the care of Mr Elworthy's two aunts.

Given that Mr Elworthy had chosen to write directly to the Chief Executive, the three complaints were dealt with under Stage 2 of the Council's complaints procedures. A stage 2 response was sent to Mr Elworthy on 17 January 2020 which provided a substantive response to the second and third complaints and informed Mr Elworthy that he would receive a separate response to his subject access request (which was governed by a different process and timescales outside of the Council's complaints procedures). A response to his SAR was sent in early February 2020.

Mr Elworthy did not accept the outcome of this complaint. He complained to the LGO about the letter from Bevan Brittan and about the response to his SAR. The LGO dismissed these complaints on 12 March 2020 and 18 March 2020

At the same time as complaining to the LGO, Mr Elworthy continued to revisit the various issues dealt with by the Council and the LGO, in particular by sending emails to the Council's Chief Executive, Debbie Warren. Following the response to his complaint dated 17 January 2020, Mr Elworthy wrote to the Council approximately 33 times between January 2020 and March 2020 displaying behaviour which in my view was unreasonable and unreasonably persistent falling within the Council's Policy on The Management of Unreasonable Complainant Behaviour.

On 12 March 2020, I reviewed Mr Elworthy's conduct in line with the Council's Policy on The Management of Unreasonable Complainant Behaviour and decided that it was reasonable and proportionate to issue him with a formal warning...Mr Elworthy did not heed the warnings and as a result, the Director of Communities and Environment agreed that formal restrictions should be imposed on his contact with the Council on 28 May 2020 and this was communicated to Mr Elworthy on 5 June 2020. Mr White was appointed as his single point of contact.

29. Mr Scarborough explained the specific background to the expenses request as follows:-

On Sunday 16 February 2020 at 00:47, Mr Elworthy sent me an email threatening to report me to the Office for the Supervision of Solicitors for professional misconduct if I did not respond to his emails by 4pm on Monday 17 February; on 17 February he sent a message stating that he had made that complaint. Subsequently on 6 May 2020 the OSS stated that they had not identified any failing by me, would not take any further action and had closed their file. Mr Elworthy wrote back the same day attempting to reopen the matter but the OSS did not raise it again with me.

Also on 17 February 2020, Mr Elworthy sent two requests asking for details of my expenses over the past 5 years and also those of Debbie Warren over the same period...The issue of my or Debbie's expenses had never arisen with Mr Elworthy and I do not believe that he had any reason to think that they were problematic in any way. Given the background I have set out above, I believe that Mr Elworthy was fishing for information he hoped he could use to discredit me and Debbie Warren.

30. In the hearing we were taken to the documentation referred to by Mr Scarborough.

Mr Scarborough explains that his expenses were 'all incurred taking public transport, and the journeys related to routine matters such as attending court, attending barristers' chambers, and attending local authority Heads of Legal meetings' and we have seen the documentation that supported this.

31. We were taken to the series of emails which related to the requests about Mr Scarborough's expenses. Following the initial request on 17 February 2020 which elicited a response on 10 March 2020 with a breakdown of the amounts (adding up to less than £200), Mr Elworthy asked for further details which were provided. The nature of Mr Elworthy's further requests can be seen in his email of 7 April 2020 where he says:-

Please confirm the date of each journey, the station that was travelled to and from, the cost of each journey and the purpose of each individual meeting. Just stating attending court and barrister meeting is too vague.

32. Mr Elworthy made further requests about the details of the expenses, and on 15 June 2020 the Council responded including the actual claim forms submitted:-

Please see attached the claim forms. This is all the information the Council holds in relation to your request.

We have redacted information relating to John Scarborough's signature, council ID number and information relating to the area of his residence in accordance with section 40(2) of the Freedom of Information Act 2000 because it is personal information...

The Finance Department has carried out a thorough search of its records and have not been able to locate two claim forms. Despite the thorough search one form cannot be located and we do not know why this cannot be found. The claim form for March 2019 was destroyed because the storage company entered the wrong destruction date and is not held by the Council.

33. The response from Mr Elworthy is also dated 15 June 2020, and contained further requests:-

Thank you for your email. The fact that your finance department cannot find the missing document and you do not know why puts me in a difficult position. Due to the expenses scandal it would be extremely concerning if this document cannot be found and now puts me in a difficult position whether I now need to report this to the police.

With regards to the documents you have provided me with they have all had either their signatures covered over or their names are missing. With the documents you have provided you have provided me with no evidence that not only the claimant but also the authorising line manager has authorised these payments. By removing the names and the signatures the forms could have been retrospectively completed. Please provide me with the fully completed document which proves these payments have been authorised.

I have also noticed that there appears to a number of people that have stated that they are in the position of director of finance at the time of the claim. Please can you provide me with confirmation who was the director of finance at the time of each claim and who is authorised to sign the claim form. Please can you confirm how you feel the best way to move forward is now that you have expenses that have been claimed for yet you cannot prove documentary evidence that they were authorised.

34. On 29 June 2020 the Council responded invoking, for the first time, s14 FOIA:-

Section 14(1) of the Freedom of Information Act 2000 ('the Act') states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. We have applied this exemption for the following reasons:-

You have unreasonably continued to raise questions in relation to the expenses of certain Council officers despite having been provided with reasonable and reasoned responses by the Council. The number of requests received by you has placed a huge burden on the Council and its staff. You have submitted numerous queries to council officers through the Council's complaints regime and under the Freedom of Information Act.

There has been a significant amount of correspondence as well as requests for information under the Act from you about the same issue and this has caused a disproportionate level of disruption, to the Council and its officers. This level of correspondence has had the effect of diverting staff away from their primary duties.

The Council has responded to you and addressed your correspondence, but you do not appear to take into account any of the responses or explanations that are provided. The Council has responded numerous times, and this leads to further correspondence from you on the same subject matter.

The Council is of the view that this level of correspondence represents the pursuit of issues beyond the point a fair-minded member of the public would consider reasonable.

The volume and pattern of requests and correspondence made by you has placed a significant burden on the Council which has concluded that you have no intention of letting matters lie. You are now at the point of pursuing the Council on this matter to an unreasonable level.

35. In relation to the 'email request', in the hearing we were taken to the relevant correspondence that appears to have led to the request. The Council explained that

request sought information about the email dated 1 March 2019 concerning a complaint by Mr Elworthy about the care of his aunt which had been disclosed to him in February 2020 in response to his SAR request. We were taken to the email in the bundle. It states:-

We will have to go through the process. I will be speaking to the team who is looking after [Mr Elworthy's aunt] and go through his complaints again to see if we are missing anything to find out exactly what he wants. If its regarding a move, then an advocate and a BIA need to get involved from the beginning.

I cannot understand his anger towards Adult. I have used a personal email in case of a SAR. You will recall he made one for his mother.

36. It was clear from Mr Elworthy's submissions to the Tribunal that he was of the view that the intention here was that a private email address was being used to avoid disclosure of information under a subject access request. Indeed at some points Mr Elworthy claimed that the email said this in terms, which is clearly not the case.

37. Mr Elworthy complained about the email to the ombudsman who was conducting the review of the November 2019 ombudsman decision and concern was expressed to the Council about the apparent use of a private email address for Council business. The Council investigated the situation and we were taken to the email response of the Council to the ombudsman dated 16 June 2020 which said:-

We have clarified with the member of staff that the line in the email: "I cannot understand his anger towards Adult [sic]. I have used a personal email in case of a SAR. You will recall he made one for his mother." refers to the member of staff's personal Royal Borough of Greenwich email account (as opposed to a shared inbox), rather than a non-RBG email account. The purpose of the member of staff using their personal RBG account was to make it easier to carry out the searches for a SAR, rather than to conceal evidence. This is why the email is from the member of staff's own (RBG) email account, rather than the team account (Adults-Casework).

38. The Council separately explained to the Tribunal that:-

The email was sent by a member of staff, Stella Nicholson, in the adult casework team using her email Stella.Nicholson@royalgreenwich.co.uk, to the Director of Health and Adult Social Care and copied to a number of other recipients including the team adult casework email address.

39. Also on 16 June 2020 the ombudsman replied to the Council by email:-

Thank you for taking the time to clarify matters, which is appreciated. I will pass your comment onto the complainants and can confirm the Ombudsman will take no further action with regards to this complaint.

40. The Tribunal also heard evidence from David White, the Council's Head of Information, Safety and Community, who also provided a witness statement confirming much of the detail set out above.

41. Thus, the Council's approach at the hearing of these appeals was to set out the history of Mr Elworthy's dealings with it to place these two requests in context. The Council recognised that Mr Elworthy had made complaints but argued that these had been dealt with in line with its procedures, and pointed to the letter of 17 January 2020 in which it was explained to Mr Elworthy that the complaints process had, in effect, come to an end.

42. The Council's case is that since then Mr Elworthy has not accepted that that was the case and has bombarded the Council with requests and demands for his complaints to be continued to be dealt with even though he has been told that this will not happen.

43. The Council says that Mr Elworthy's persistence has turned into harassment of Council officers, and in particular Mr Scarborough, as detailed in Mr Scarborough's statement. It was pointed out that Mr Elworthy has accepted that he has used a private investigator to gather information about officers, including Mr Scarborough, and this includes personal information such as private addresses and activities. There is an email from Mr Elworthy dated 23 January 2022 to Ms Warren in which he says that:-

If I could refer you to a email which I sent very early in the process. When it became apparent that your director of legal was prepared to act dishonestly in order to conceal your mistakes I took the decision to provide myself with some insurance in case this day would come. As you may recall from the email that I sent very early on in this process I had paid for a private investigator to follow both Debbie Warren and John Scarborough. As a result I know where they work (obviously) where they live, where they go shopping, where they go to restaurants etc etc. Basically I know everything I need to know about these two individuals.

44. The reference to an earlier email appears to be a reference to an email sent to Ms Warren on 7 February 2020 (before the requests in both these appeals) in which Mr Elworthy says 'I have had some investigations done on you. The results are very interesting. I now have all the evidence I need'.
45. The Council says that the requests which are the subject matter of these appeals need to be considered against this backdrop of persistence and harassment
46. In relation to the expenses appeal, the Council points to emails from Mr Elworthy prior to the request which put pressure on Mr Scarborough to respond to Mr Elworthy. The Council points to the fact that increasingly detailed requests about the expenses (which amounted to a few small travel claims), which eventually included threats to report the case to the police, which led ultimately to the application of s14 FOIA at that point.
47. In relation to the email request, the Council's case is that Mr Elworthy's pursuance of the issue of the use of personal emails is simply misguided and misconceived, and is of no value.
48. Mr Elworthy made detailed submissions at the beginning and end of the hearing and asked questions of the Council's witnesses. He continues to believe there is corruption and dishonesty in the Council and believes that this justifies the requests made to the Council which are the subject matter of this appeal, and his persistence in pursuing various issues with the Council. He said there is nothing against the law which means he cannot employ a private investigator to carry out surveillance of the private lives of council officers. He was of the view that his persistence was appropriate against a Council which had an incompetent chief executive and a director of legal services who was carrying out a personal vendetta against Mr Elworthy.
49. He was entitled to find out how often personal email addresses were being used even if these were personal work addresses. His requests for Mr Scarborough's expenses had revealed that there were not complete records and one form for travel expenses was missing.

DISCUSSION

50. It seemed to the Tribunal that Mr Elworthy has a genuine belief that there is corruption in the Council, that senior officers have a vendetta against him, and that therefore he was entitled to continue to take steps to try to uncover wrong-doing, including carrying out personal surveillance on officers, making complaints to professional bodies and pursuing the issues which are the subject matters of these appeals.
51. However, in our view there is no evidence to support Mr Elworthy's beliefs. We were taken to the decision-making documents in relation to his complaint, and it can clearly be seen that the Council advised Mr Elworthy that his complaint had been dealt with at a stage 2 level on 17 January 2020 and that the next stage would entail a complaint to the ombudsman (which is one of the remedies that has been pursued by Mr Elworthy). We accept the Council's submission that once the complaint had been addressed in accordance with its procedures, then Mr Elworthy could not expect his continued and persistent correspondence thereafter to be responded to.
52. We accept that Mr Elworthy put pressure on the Council and its officers to respond to his further correspondence and made specific threats about further action if this did not happen. We also note the contemporaneous use of a private investigator by Mr Elworthy to follow and discover personal details of the Council staff. Whether the specific requests considered in this case are vexatious for the purposes of s14 FOIA must be considered 'holistically' and within this context.

The expenses request

53. In our view the Council is correct that the complaint to which s14 FOIA was applied was the request of 15 June 2020 (see paragraph 33 above). By that time the Council had answered a series of requests about Mr Scarborough's extremely modest travel expense claims, including actual claims forms, but this was not sufficient for Mr Elworthy who continued to press for more information.
54. It is clear to us that the ongoing requests (including the request of 15 June 2020) were designed to put pressure on Mr Scarborough and this can be seen from the contemporaneous correspondence and threats made to Mr Scarborough and other staff. In our view, on the evidence we have now seen and heard, the request of 15 June 2020 was vexatious. Applying the relevant case law the guidance from the Commissioner, the request was burdensome on the Council, it was pursuing a personal

grudge as Mr Elworthy believed that Mr Scarborough was involved in a vendetta against him, it demonstrated unreasonable persistence, it pursued an unfounded accusation of corruption, and amounted to a fishing expedition. In our view there was no value in pursuing the expenses issue given the responses already given by the Council, and the very limited amounts in question in any event.

55. We have had the benefit of further information than that available to the Commissioner, and we do not reach the same conclusion as that reached by the Commissioner.

The email request

56. In our view the email request was completely futile and we agree with the conclusion reached by the Commissioner in relation to this request. As the Commissioner said in the decision notice, Mr Elworthy was ‘attempting to persist with an issue which has already been comprehensively addressed.... [and was] a continuation of the complainant’s pursuit of a matter that has been subject to at least one independent investigation, and which has been fully dealt with, and concluded’.

57. Further and in any event, it is clear to us that nothing was being done by Council officers which could lead Mr Elworthy to the view that officers were using their own private emails (as opposed to personal work emails) as a way of avoiding having to deal with Mr Elworthy’s requests for information. It is obvious to us that Ms Nicholson, in the relevant email, was simply suggesting a way to ensure that she was aware of any correspondence from Mr Elworthy because she had dealt with a similar case in the past. This is a wholly unexceptional way for a public official to act, as can be seen from the email from the ombudsman thanking the Council for clarification. In our view, this request is a continuation of Mr Elworthy’s general campaign against the Council and his misconceived view that officers are acting dishonestly and corruptly. The request, when seen in the general context of Mr Elworthy’s correspondence and interaction with the Council has no serious value.

58. On that basis we allow the Council’s appeal in case number EA/2021/0292 and substitute a decision notice to the effect the London Borough of Greenwich was correct to rely on s14(1) of the Freedom of Information Act 2000 in relation to the request in that case.

59. We dismiss Mr Elworthy's appeal in case number EA/2021/0160.

60. No further action is required.

Signed: Recorder Stephen Cragg KC

Sitting as a judge of the First-tier Tribunal

Date: 7 November 2022.

Promulgated: 11 November 2022.