IN THE FIRST-TIER TRIBUNAL **EA/2011/0079**
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL FROM
The Information Commissioner's Decision
No FS50317322, dated 16 March 2011

Appellant:	**Alan Dransfield**
Respondent:	**Information Commissioner**
Date and place of hearing:	**24 August 2011 at Field House**
Date of decision:	**20 September 2011**

Before

Anisa Dhanji
Judge

and

Alison Lowton and Dave Sivers
Panel Members

Representation:

For the Appellant: in person
For the Information Commissioner: Mr T Cross, Counsel

Subject matter

FOIA section 14(1) – whether request was vexatious

Cases

Ward (EA/2009/0093); Adair (EA/2009/0043); Carpenter (EA/2008/0046); Betts (EA/2007/0109); Gowers (EA/2007/0114); Coggins (EA/2007/0130); Welsh (EA/2007/0088); Billings (EA/2007/0076); Hossak (EA/2007/0024); Brodie MacClue (EA/2007/0029); Brown (EA/2006/0088); Ahilathirunayagam (EA/2006/0070).

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DECISION

The Tribunal allows the appeal and substitutes the following Decision Notice in place of the Commissioner's Decision Notice dated 16 March 2011.

SUBSTITUTED DECISION NOTICE

Date: **20 September 2011**

Public Authority: **Devon County Council**

Address of Public Authority: **County Hall**
Topsham Road
Exeter
EX2 8GX

Name of Complainant: **Alan Dransfield**

The Substituted Decision

For the reasons set out in our determination, we find that the Appellant's request dated 29 May 2010 was not vexatious.

Action Required

Within 20 working days of the Tribunal's determination being promulgated, the Public Authority must disclose to the Appellant all information coming within the scope of his request that it held as at the date of the request.

If the Public Authority holds information within the scope of the request that it did not hold as at the date of the request, it is not required to provide it. However, if it decides not to provide it, it must identify such information to the Appellant so that the Appellant may, if he so wishes, make a separate request for such information.

Signed **Date: 20 September 2011**

Anisa Dhanji

Tribunal Judge

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr. Alan Dransfield (the "Appellant"), against a Decision Notice issued by the Information Commissioner (the "Commissioner"), on 16 March 2011.

The Request for Information

2. On 29 May 2010, the Appellant wrote to the Devon County Council (the "Council"). The letter was headed, "Dangers at Exeter's Chief Rugby Grounds (ECRG) and Pedestrian Bridge" and it contained the following request for information:

> *"Under protection of the FOI Act please provide me with the approved design drawings for the Pedestrian Bridge and LPS [Lightening Protection System] test results since the Devon County Council adopted the Pedestrian Bridge."*

3. The Council refused the request on the basis that it was vexatious, relying on the exemption in section 14(1) of the Freedom of Information Act 2000 ("FOIA"). The Appellant sought an internal review of the Council's decision which the Council undertook, but it upheld its refusal.

The Complaint to the Commissioner

4. The Appellant then complained to the Commissioner, arguing that the Council had treated him as vexatious, rather than considering whether the request was vexatious. He asserted that his request related to serious and potentially life threatening dangers, and as such, the Council was wrong to treat his request as vexatious.

5. The Commissioner investigated the complaint and asked the Council to explain why it considered the Appellant's request to be vexatious. The Commissioner reviewed the history of the Appellant's dealings with the Council, and the correspondence and contact between the Appellant and Council up to the date of the request. He concluded that the Council had correctly applied section 14(1), and that the request was indeed vexatious.

6. Part way through the Commissioner's investigation, two things arose that merit brief mention. First, the Appellant said that he wished to expand his original request to include a request for a further document. The Commissioner informed him (rightly in our view), that he would need to make a separate request. Second, the Council advised the Commissioner that it was now minded to consider that the information requested was not held by the Council, nor by a third party on the Council's behalf. The Council later

revised its position. It accepted that it did hold the information although it only held some of it at the date of the request.

The Appeal to the Tribunal

7. By a Notice of Appeal dated 12 April 2011, the Appellant appealed to the Tribunal against the Decision Notice.

8. At the Appellant's request, the Tribunal held an oral hearing. In advance of the hearing, the parties lodged an agreed bundle of documents. They also each lodged written submissions. No witness statements were submitted, although the Appellant's written submissions were in effect, in part, a witness statement. The Tribunal had indicated to the Commissioner, in directions, that witness evidence from the Council would likely be helpful. However, none was lodged. It is of course for the Commissioner to decide what evidence he wishes to rely on to make out his case.

9. The hearing itself was a relatively short one, lasting less than 2 hours. The Appellant gave evidence and was briefly cross-examined. Both parties then made oral submissions. They were also briefly questioned by the panel.

The Tribunal's Jurisdiction

10. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other Notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.

11. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, as in this case, the Tribunal will often receive evidence that was not before the Commissioner.

12. The Appellant's grounds of appeal raise a number of matters and allegations which, as the Tribunal explained to the Appellant, both prior to and at the hearing, are outside the Tribunal's jurisdiction. The Tribunal can only consider matters relating to the Appellant's right of access to information held by the Council, and in particular, whether the Council was entitled to refuse his request under section 14(1) of FOIA. Accordingly, the grounds of appeal and submissions have been read as being confined to such matters.

The Legislative Framework

General

13. Under section 1 of FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.

14. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA, or if certain other provisions apply. In the present case, the Council relies on section 14. This does not provide an exemption as such. Rather, it simply renders inapplicable the general right of access to information contained in section 1(1).

Section 14

15. Section 14 sets out two grounds on which a public authority may refuse a request. The first is where the request is vexatious. The second is where the request is identical or substantially similar to a previous request that the public authority has already complied with. The Council relies only on section 14(1) which provides as follows:

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

16. Where section 14 applies, the public authority does not have to provide the information requested.

Findings

Section 14(1) – Principles

17. The only issue for the Tribunal in this appeal is whether the Appellant's request of 29 May 2010 was vexatious. FOIA does not define "vexatious". However, its meaning has been considered by the Tribunal in a number of cases, including, in particular, in those cases listed on the first page of this determination.

18. A number of key principles emerge from these cases. These are summarised at paragraphs 27 to 32 in **Rigby**. They are not in dispute and we will not therefore, reiterate them here save to highlight these of particular relevance to the present case:

- section 14(1) is concerned with whether the request is vexatious, and not whether the applicant is vexatious;
- it is not only the request itself that must be examined, but also its context and history. A request may show its vexatious quality only when viewed in context; and
- the standard for establishing that a request is vexatious should not be set too high, nor too low. Section 14(1) calls for a balancing of the need to protect public authorities from genuinely vexatious requests on the one hand, without unfairly constraining the legitimate rights of individuals to access information on the other.

19. The Commissioner's Awareness Guidance 22 ("AG 22") on "Vexatious and Repeated Requests" which the Commissioner applied in reaching his decision, and which the Council was asked to address during the course of

the Commissioner's investigations, focuses on five questions when determining whether a request is vexatious:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

20. AG22 is not binding on public authorities, nor of course on the Tribunal. Nevertheless, the considerations it identifies are a useful guide to public authorities when navigating the concept of a "vexatious" request, bearing in mind, however, that each case must of course be viewed on its own facts.

The request and the background to the request

21. On the face of it, this was a very straightforward request. The Appellant asked for approved design drawings of the pedestrian bridge at Exeter's Chief Rugby Grounds and the lightening protection system ("LPS") test results in relation to that bridge. Although the Council's correspondence raises some issues as to what exactly they had at the date of the request, and whether or when they adopted the bridge, these are not matters they rely on in refusing the request. There are also no issues about what exactly the Appellant was asking for and there was no correspondence generated between the Council and the Appellant as a result of this request.

22. However, as with many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of previous FOIA requests and difficult encounters between the parties. It is this history that the Council and Commissioner rely upon in characterising the Appellant's request as vexatious.

23. In particular they highlight the quantity of prior requests and correspondence. At page 71 of the agreed bundle, is a summary of this history produced by the Council. The Appellant accepted at the hearing that this summary is accurate. It sets out the requests the Council has received from the Appellant since 2005, and the dates of correspondence between the Appellant and the Council arising in relation to the requests.

24. In brief:

- From the period 9 February 2005 to 25 June 2005, there was one FOIA request made on 11 February 2005 concerning the "Lafarge Concrete Scandal", and 16 items of correspondence on the same subject.
- From the period 1 December 2005 to 11 March 2007, there were 3 FOIA requests concerning the safety and LPS in relation to a

pedestrian bridge at a private finance initiative ("PFI") site, and 6 items of correspondence on the same subject.

- From the period 28 January 2008 to 28 May 2009, there were 18 items of correspondence concerning health and safety files for PFI and LPS. There were also 6 FOIA requests on the same subject.

25. We have not been provided with copies of these requests or related correspondence. We would also mention for completeness that in June and September 2010, the Appellant made 2 further FOIA requests. The subject matter of the first has not been stated on the Council's summary. The second was for operations maintenance manuals for 6 PFI schools. Neither of these is relevant to the present appeal, however, because they post-date the request in issue here.

26. The Commissioner says that the subject matter of all the Appellant's requests relates to health and safety and LPS in particular, and that his request of 29 May 2010 was a continuation of his previous requests. They say that compliance with such a request will only fuel additional correspondence and requests for information.

27. As evidence of his obsessiveness, they say that in 2009, the Appellant was found to be repeatedly entering at least one PFI school premises, presumably with a view to proving his assertions about the lack of safety of some of the schools, and that he was subsequently banned from coming on to school premises again.

28. As regards tone and language, they say that the Appellant has displayed an aggressive and harassing tone in relation to his correspondence and has accused the Council and members of staff of being corrupt, dishonest and covering up criminal behaviour. Numerous examples are set out in the Council's letter to the Commissioner dated 1 December 2010 at paragraph 3(iii). They also say that in his correspondence with the Council, the Appellant has mingled requests with accusations and complaints, and by singling out particular officers, he has caused them distress. They say that in fact, in 2005, the Appellant's emails were so numerous and the accusations they contained about staff so wild and defamatory, that the then Chief Executive took the unprecedented step of putting a bar on further incoming emails from him.

29. In addition, they say, that there is no significant public interest in the disclosure of the information requested and it would not significantly further the public's understanding of the issues raised or how public money is spent. They maintain that there are no health and safety issues with regard to the pedestrian bridge in question and that it is fully compliant with the BS6651 (Lightening Test Standard).

30. We would note here that we gave the Appellant an opportunity, at the hearing, to explain why it is that he is interested in the subject matter of this request. His answer did not shed much light save to indicate that he considers that the LPS in effect is inadequate without explaining why he considers it to be inadequate.

Was the Request Vexatious?

31. We come now to our findings. We have given careful consideration to the history of prior dealings between the Appellant and the Council, and to the submissions made by the parties. As we have already indicated, the principles to be applied are not in dispute. The dispute is about how they apply in the present case.

32. In our view the request was not vexatious. On the face of it, the request is simple and entirely benign. If this was the only request that the Appellant had ever made to the Council, we have no doubt that the information would have been provided. It is clear that the reason the request was refused had nothing to do with the request itself. Rather, it had to do with the history of prior dealings between the parties in relation to prior requests. Both the Council and Commissioner have been up-front about that - the Council in its letter dated 23 July 2010 refusing the request, and the Commissioner in his Decision Notice and submissions to the Tribunal.

33. To that extent, this case is not unusual. It is previous history that leads to many section 14(1) refusals, and the Tribunal has recognised, in several cases, that history and context are important considerations when determining whether a request is obsessive (see for example **Gowers** at paragraph 29, and **Rigby** at paragraph 40).

34. Typically, however, in those cases, there has been an underlying grievance at the heart of the request in issue, and at the heart of a series of previous requests and correspondence. More often than not, each response from the public authority has given rise to further requests, and each perceived obstruction in the response, has given rise to further allegations, all reverberating back to the original grievance. Even where the original grievance may have been independently investigated, sometimes several times, the requester has remained dissatisfied and has continued to make ongoing requests for information in an attempt, in effect, to pursue his complaint by alternative means.

35. In such cases, the Tribunal has found that even where the request in issue is benign, when viewed in the context of the previous history and the previous requests, the request takes on a vexatious quality. That was the case, for example, in **Rigby,** where the requester held the public authority responsible for his mother's death and made request after request to try to obtain further information to justify his grievance. It was also the case in **Gowers,** where the requests in issue arose from the requester's view that the public authority had failed in its services in relation to his daughter's education. Similarly, in **Coggins,** the underlying complaint linking all the requests was about perceived fraud in charging for a certain individual's domiciliary care, notwithstanding that the complaint had been investigated and no irregularity found. Likewise in **Welsh**, the underlying complaint was the failure of the requester's GPs to make a correct diagnosis of cancer. The requester kept up his correspondence and requests for some two years notwithstanding that his complaint had been investigated and had been held to be unfounded. In **Hossak,** the underlying complaint was the unauthorised disclosure of personal data about which the requester had been campaigning ever since.

36. In all these cases, it was important and relevant, when assessing whether the request in issue was vexatious, to consider the history of the requester's dealings with the public authority. There is, however, an important distinction to be drawn between taking into account the history and context of a request, as in the cases referred to above, and taking into account the history and context of other requests made by a requester or other dealings between the requester and the public authority. The former is an entirely proper and valid consideration. The latter risks crossing the line from treating the request as vexatious, to treating the requester is vexatious. That line, in our view, was crossed in the present case.

37. The Appellant here made 11 requests from the period February 2005 to May 2010 (including the request in issue in this appeal), so a little over 2 requests per year. The requests concerned four different subjects. From the information provided by the Council, it appears that three of those four subjects were in relation to safety and LPS issues of built structures. The other request (in relation to the Lafarge Concrete scandal) was of a different nature, although still on the general subject of health and safety. Only one previous subject concerned a pedestrian bridge, and that was at a school. The present request was made a year after the previous requests. It concerned a different site and may well have raised different health and safety considerations. There was no single underlying complaint linking these various requests.

38. In these circumstances, we do not consider that the present request can be said to be a continuation of the previous requests, and we consider that the Council was not entitled, under section 14(1), to refuse the request on the basis of the past history. We accept that there is a link between the subject matter of the present request and the Appellant's previous requests, in that they have all concerned safety issues and that most have concerned LPS. However, we do not consider that this similarity of subject matter is enough for this request to be seen as a continuation of the previous requests and thus infected by the history of those requests. It must often be the case that people will want to make a number of different requests on broadly the same subject area. Journalists and other types of researchers must do so frequently. Apart from the cost considerations in section 12, there is nothing in FOIA that is hostile to this.

39. It is important that all requests from an applicant should not be refused as being vexatious just because some may have been. However, we recognise that in many cases, including the present one, it is likely to be difficult for a public authority to know where to draw the line. By drawing the line too soon, however, a public authority risks doing precisely what section 14(1) does not permit it to do, and that is to treat the requester as vexatious. If it is refusing the request just because of what it knows about how the requester has conducted himself on previous occasions, and based on that, how it believes he will conduct himself again, then it is the requester rather than the request that is being treated as vexatious.

40. We do not say that the test is whether the same request made by another requester would have been refused. The public authority is not expected to ignore its previous dealings with the requester. However, in our view, it needs

to assess whether, and to what extent, that previous course of dealings relates to the request in question. The test, if there is one, has to do with how closely related the request is to the previous history that the public authority relies on. The more closely it is related, the more defensible the public authority's reliance on section 14(1) would be.

41. Our finding that the request is not vexatious is not intended to condone the Appellant's conduct in his previous dealings with the Council, nor to prevent the Council from dealing with any further such conduct as it considers appropriate. We have sympathy with any public authority which, having dealt with hostility and unpleasantness from a particular requester, decides to draw a line when it is faced with another request from him, fearing that that request, too, will become a springboard for further hostility and harassment and will generate further correspondence, if not further requests.

42. Although we have no evidence from particular members of staff at the Council as to the effect on them of the Appellant's previous correspondence, we accept from the excerpts from his correspondence that we have seen, that his language and tone goes beyond what might be characterised as a reasonable level of frustration expressed by somebody who is being denied what he considers he is entitled to. He makes repeated accusations of fraud, malfeasance, and criminal behaviour. There is nothing on the evidence before us to support such accusations and indeed if there was, then the proper course of action would be to approach the police or other law enforcement authority, rather than continuing to harass the Council.

Decision

43. We allow this appeal. This decision is unanimous.

Signed **Date: 20 September 2011**

Anisa Dhanji

Tribunal Judge