

**FOIA s.12** – Cost of compliance and appropriate limit

**FOIA s.14(1)** - Vexatious or repeated requests

## ***Mr David Gowers v IC & London Borough of Camden***

**EA/2007/0114**

**13<sup>th</sup> May 2008**

### **Cases:**

Ahilathirunayagam v IC & London Metropolitan University [2007] UKIT EA\_2006\_0070\_

### **Facts**

The Appellant made a number of requests to the Council about its Central Complaints Unit (“the CCU”). The Council responded to certain requests, but refused 10 requests on the basis of ss.12 and 14 of FOIA.

The IC found that all 10 requests were vexatious and that the Council had correctly applied s.14(1).

### **Findings**

#### Defining ‘Vexatious’

FOIA does not define “vexatious” but s.14(1) makes it clear that it is concerned with whether the request is vexatious, not whether the requester is vexatious. In the absence of a definition of “vexatious”, Parliament must have intended the term to be given its ordinary meaning. In *Ahilathirunayagam*, that was taken to refer to activity that “is likely to cause distress or irritation, literally to vex a person to whom it is directed”. The IC’s Awareness Guidance Note 22, observes that dictionary definitions of “vexatious” refer to “causing annoyance or worry”.

The focus is therefore on the likely effect of the request, ie, whether the request is likely to vex. The standard is an objective one. However, a request is not vexatious just because the requester is seeking information which the public authority may prefer not to disclose. Distress, annoyance, irritation or worry arising from the possible consequences of disclosure cannot turn an otherwise proper request into a vexatious one.

It is not only the wordings or nature of the request that must be examined, but also its context and history. A request which taken in isolation, may be quite benign, may show its vexatious quality only when viewed in context.

#### Were the 10 requests vexatious?

The 10 requests in issue are clearly vexatious. The Appellant has often expressed his dissatisfaction with the CCU in a way that would likely have been seen, by any reasonable recipient, as hostile, provocative and personal (particularly in relation to the CCU’s head), and going beyond any reasonable pursuit of his grievances.

There is no merit in the Appellant's contention that the requests cannot be vexatious because the Council allowed further requests on the same theme. The issue is whether the public authority's refusal was lawful at the time of the refusals, regardless of what did or did not happen subsequently. Also, while s.14(1) says that a public authority is not obliged to respond to a request which is vexatious, it does not prevent a public authority from doing so.

FOIA is motive-blind; a requester's entitlement to information is not any the lesser or greater by reason of his intentions. Of course, if a requester's motives are to harass, irritate or annoy a public authority, it is more likely that his request will be characterised as vexatious, but that is simply because in such a situation, it is likely that his request will have been designed to achieve his objective. It does not follow that a request can only be vexatious if the requester intended it to be so.

### **Conclusion**

The Tribunal held that 'vexatious' was to have its ordinary meaning according to the decision in *Ahilathirunayagam* and that the 10 requests for information by the Appellant were vexatious. The Tribunal dismissed the appeal.

### **Observations**

The IC relied on its Awareness Guidance Note on vexatious and repeated requests. This is a helpful framework, but it is not binding on the Tribunal. When considering whether requests are vexatious, the Tribunal urged caution in placing too much emphasis on whether the requests impose a significant burden on the public authority. The appropriate safeguard against public authorities being unduly burdened is s.12, not s.14. In considering whether a request is vexatious, the number of requests and the demands they place on the public authority's time and resources may be a relevant factor, but if the Awareness Guidance Note is intended to indicate that a request can only be vexatious if it imposes a significant burden on the Council in terms of expense or distraction, that might be going too far.