



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

Case No. EA/2016/0221

ON APPEAL FROM:

**The Information Commissioner's Decision Notice
No FS50603302 dated 8 August 2016**

Appellant: Steve Sanders
Respondent: Information Commissioner
Date of hearing: 14 February 2017
Date of decision: 13 June 2017

Before

**Anisa Dhanji
Judge**

and

**Narendra Makanji and Steve Shaw
Panel Members**

Representation

For the Appellant: in person

For the Respondent: no attendance

Subject matter

Freedom of Information Act 2000, section 14(1) - whether request was vexatious

Case law

Ainslie v Information Commissioner and Dorset County Council [2012] UKUT 441 AAC; Information Commissioner v Devon County Council and Dransfield [2012] UKUT 440 AAC; Craven v Information Commissioner and Department of Energy and Climate Change [2012] UKUT 442 AAC; Dransfield v ICO & Devon County Council; Craven v ICO & Department for Energy and Climate Change [2015] EWCA Civ 454; CP v The Information Commissioner [2016] UKUT 0427 (AAC).

DECISION

This appeal is dismissed.

Signed

Date: 13 June 2017

**Anisa Dhanji
Judge**

REASONS FOR DECISION

Introduction

1. This is an appeal by Steve Sanders (the “Appellant”), against a Decision Notice issued by the Information Commissioner (the “Commissioner”), on 8 August 2016. It concerns a request for information made by the Appellant to the Ministry of Justice (“MoJ”) on 9 September 2014.
2. The request followed numerous previous requests for information made by the Appellant to the MoJ and Her Majesty’s Courts and Tribunals Service (“HMCTS”), relating to the handling of claims brought by him in the County Court. The Appellant had complained to the Commissioner about the MoJ’s handling of a number of these information requests. The Commissioner issued several decision notices and there have also been a number of appeals before the First-tier Tribunal (General Regulatory Chamber) (“FTT”) against these decision notices.

The Request for Information

3. The request giving rise to the present appeal (the “Request”), was contained in a wide-ranging letter from the Appellant to the MoJ on 9 September 2014. It was dealt with by the Commissioner as having been made on the following terms:

“I note the Ministry of Justice issues guidance to other public authorities on compliance with the Freedom of Information and Data Protection Acts. Please provide copies of all such information and documentation.

Kindly provide the name, email address and job title of the person you report to [in respect of the head of the MoJ’s Disclosure Team].

Kindly provide all information held as to your duties, responsibilities and remit as the MoJ’s Head of Disclosure [in respect of the head of the MoJ’s Disclosure Team].

Kindly inform of your salary and the length of time you have been employed by the MoJ and of any previous roles within the MoJ or U.K. Government [in respect of the head of the MoJ’s Disclosure Team]”.

4. The MoJ refused the Request, relying on section 14(1) of the Freedom of Information Act 2000 (“FOIA”), namely that the request was vexatious. The decision was maintained following an internal review.

The Complaint to the Commissioner

5. The Appellant complained to the Commissioner under section 50 of FOIA.

6. The Commissioner considered representations made by the MoJ in connection with a previous complaint made by the Appellant, and decision notice (FS50558542), issued by the Commissioner in relation to that complaint. The Commissioner also considered the relevant case law, and the Commissioner's own Guidance Note on vexatious requests, and found that the MoJ had correctly applied section 14(1), and that the Request was vexatious.
7. In reaching this decision, the Commissioner considered that the key question to ask when weighing up whether a request was vexatious is whether the request was likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the impact on the authority should be considered and balanced against the purpose and value of the request, taking into account the background and history to the request.
8. The Commissioner regarded the first part of the Request (for copies of all guidance on data protection and freedom of information that the MoJ had issued to other authorities), to be unfocused, and considered that it could cover a large volume of information. The Commissioner considered that this request was less likely to have been regarded as vexatious had the Appellant focused on particular information. The remaining parts of the Request referred to the Head of the MoJ's Disclosure Team. The Commissioner considered those parts of the Request could be described as harassing that staff member.
9. The Commissioner considered that the MoJ has been able to demonstrate that it has engaged with the Appellant's correspondence over a number of years, to a significant extent, and that cumulatively, it has spent a significant amount of time and resources in dealing with his information requests, in addition to separate complaints and other correspondence from him.
10. On the basis of arguments put forward by the MoJ in connection with the previous complaint made by the Appellant (FS50558542), and the history of his previous information requests and encounters between the parties, the Commissioner considered that it was reasonable to conclude that the Appellant would continue to submit requests and/or have further contact with the MoJ regardless of any response provided to the Request. The Commissioner considered that it was clear that the Appellant was not satisfied with the MoJ and how it conducts itself. The Commissioner also considered that it was reasonable for the MoJ to be concerned that the Appellant would use the requested information in a disruptive way, by contacting the staff member whose information he had sought. The Commissioner was satisfied that in the context of the MoJ's previous and ongoing dealings with the Appellant, complying with the request would result in a disproportionate burden on its resources. For all these reasons, the Commissioner was satisfied that the MOJ had correctly relied on section 14(1) FOIA.

The Appeal to the Tribunal

11. The Appellant has appealed against the decision notice. The MoJ has not been joined as a party to the appeal. The Appellant requested an oral

hearing. The Commissioner considered that an oral hearing was not necessary, and did not attend the hearing.

12. Prior to the hearing, we received a bundle of some 300 pages. We have considered all the documents before us, including those received from the parties subsequent to the hearing, even if not specifically referred to in this decision.
13. At the start of the hearing, we explained the procedure of the hearing to the Appellant. We also explained what the hearing was about (whether the Request was vexatious), and equally what it was not about (whether the MoJ or HMCTS had been guilty of any wrongdoings). We are satisfied that the Appellant has had an opportunity to fully put forward his case.

Grounds of Appeal and the Commissioner's Response

14. The Appellant's grounds of appeal are extensive. They also set out in some detail his correspondence with the Commissioner's office. In brief, we take the grounds of appeal to be that:
 - the Commissioner deliberately ignored his actual complaint and the real issues;
 - the Request (and his other requests dating back to October 2012) were not vexatious given the MoJ's protracted failure to comply;
 - the Commissioner's lead case officer appeared to be biased;
 - the Commissioner had little real understanding of the issues between the Appellant and the MoJ and was in no position, therefore, to decide that the Appellant's requests are vexatious, and that the MoJ's position is reasonable;
 - the first part of the Request was not "unfocused". The MoJ must already know and have readily available, the guidance it provides to other public authorities; and
 - the Appellant was fully entitled to complain about the conduct of the MoJ employees whose details he had requested.
15. The Commissioner's response to the notice of appeal is briefly as follows:
 - other requests and issues between the parties have been addressed separately by the MoJ and in some cases, by the Commissioner and the FTT. The Appellant cannot attempt to reopen those matters in this appeal. The scope of this appeal is the information request made by the Appellant on 9 September 2014;
 - although the Appellant has made many previous requests to the MoJ and remains dissatisfied with the responses he has received, on a number of occasions, he has referred complaints to the Commissioner and appealed to the FTT, and the MoJ's responses have been largely upheld;

- there is no evidence of actual or perceived bias on the part of the case officer involved in this case;
 - there has been a long history of correspondence between the Appellant and the MoJ, some of which has been the subject of consideration by the Commissioner on previous occasions in the context of other information requests. The Commissioner therefore has a good understanding of the background to the Request and the context in which it was made. While it is relevant to take the background into account, it is not for the Commissioner, nor for the Tribunal to investigate or determine the substantive complaints made by the Appellant against the MoJ;
 - the Commissioner was entitled to note that the scope of the request was extensive, seeking disclosure for a considerable amount of information, and to observe that a more focused request would have been less likely to be considered vexatious. However, this factor was not determinative because the Commissioner also took into account the context of the request and the history of the correspondence; and
 - while the Appellant may complain about an individual if he chooses to do so, the requested information is not necessary to enable such a complaint to be made.
16. The Appellant has provided a reply to the Commissioner's response which we have also considered.

The Tribunal's Jurisdiction

17. 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.
18. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Decision 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.

The Statutory Framework

19. Under section 1 of FOIA, any person who makes 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.
20. 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 MoJ has invoked section 14.

This section does not provide an exemption as such. Its effect is simply to render inapplicable the general right of access to information contained in section 1(1). Where section 14 applies, the public authority does not have to provide the information requested, nor indeed is it required to inform the requester if it holds the information.

21. 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 MoJ has relied on the first.

22. Specifically, section 14 provides as follows:

(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.

Evidence and Submissions

23. As already noted, the Commissioner did not attend the hearing. We have considered his position as set out in the decision notice and in the response to the notice of appeal, as summarised above.

24. We were concerned, however, that while the Commissioner had made reference to arguments made by the MoJ in relation to previous complaints made by the Appellant and had also made extensive reference to the previous dealings between the parties, he had not provided a full history about those matters. Bearing in mind that in **CP v The Information Commissioner**, the Upper Tribunal stated that:

"The high hurdle for satisfaction of the section 14(1) test requires an appropriately detailed evidential foundation before the Tribunal which addresses the course of dealings between the requestor and the public authority. This need not be compendious or exhaustive but must explain those dealings in sufficient detail and put them into context" (para 2),

the Commissioner was directed to provide further details of that history.

25. The Appellant, did not lodge a witness statement, but gave evidence and made submissions (albeit without distinguishing between the two), which we will refer to below, to the extent relevant. He also took us to various documents in the bundle. In addition, the panel asked him some questions.

26. In brief, the Appellant says that his letter of 9 September (containing the Request) was part of a longer letter which itself is part of ongoing correspondence between him and the MoJ. He says that the Request repeats his previous requests for information, particularly, as set out in his letters of 5 December 2012 and 11 March 2014, and that when he

complained to the Commissioner, it was in relation to all the previous requests as well.

27. By way of background, the Appellant says that between 2000 and 2005, he was involved with claims at the Barnet County Court in which he was seeking payment for work done as a musician/actor. He encountered problems at the court. He says that the court staff made it plain that they did not like dealing with a litigant in person. He had difficulty with one member of staff, in particular. He complained to the court manager, but was not satisfied with how that complaint was dealt with. He then explained the various further developments (including proceedings for defamation, and a strike out application, as well as an apology he received), which we do not need to set out in any detail here.
28. In relation to his various requests under FOIA, he says that in about 2008, he felt that his efforts to seek resolution by way of formal complaints was not yielding the desired result. He had written to various different people but there was no genuine effort to investigate his complaints, and so he then began to use the FOIA route to seek to obtain internal documents that tell the court staff what to do and what not to do, and also, information about the complaints handling procedure.
29. To better understand the dealings between the parties, we have considered the correspondence between them in the bundle, as well as the previous decision notices and FTT decisions, contained in the bundle, including in particular:
 - Decision notice FS50498837, upheld on appeal EA/2013/0238;
 - Decision notice FS5040688, upheld on appeal EA/2014/0243;
 - Decision notice FS50552499, upheld on appeal EA/2015/0043;
 - Decision notice FS50558542, upheld on appeal EA/2015/0068; and
 - Decision notice FS50571695 substituted by the FTT's consent order in appeal EA/2015/0228.

It may be helpful if we briefly summarise this history. To the extent that some of the requests post-date the Request, we consider that they are still relevant to explain the nature of the dealings between the parties.

30. Decision notice FS50498837 dated 28 November 2013, concerns the Appellant's request made to the MoJ on 3 February 2010. The request was for the complaints handling manual and standard phrases recommended for use by complaints handlers at Her Majesty's Court Service ("HMCS"), now the HMCTS. The Appellant explained that the request was made for the purpose of deciding whether a named HMCS employee was deliberately breaching "your own rules and guidelines or whether your staff are instructed to misdirect and shift the focus of complaints whilst evading or rewriting what the complaint is actually about". The MoJ relied on the exemptions in sections 31, 40 and 42. The decision notice records that the Appellant had asked for similar information on previous occasions and

referred, for example, to requests he had made on 12 July 2009, and on 10 January 2010. It also records that there had been protracted delays on the part of the MoJ in dealing with the Appellant's request. For the reasons set out in the Decision Notice, the Commissioner required the MoJ to disclose part of the information, subject to certain redactions. The Commissioner also went on to consider whether the MoJ's failures in dealing with the Appellant's requests amounted to a criminal breach of FOIA under section 77 as alleged by the Appellant, but considered that there was no evidence to support such a finding.

31. The Appellant appealed to the FTT. In a decision dated 21 May 2014, the FTT noted that the Appellant had a long course of dealings with the MoJ during which he had made a number of complaints about how he had been treated by court staff and how those complaints had been handled. The FTT noted that the Appellant maintained that the MoJ had deliberately withheld the information requested and that the Commissioner should have exercised his powers under section 77 of FOIA, but noted that that was not a matter within the FTT's jurisdiction. It dismissed the appeal.
32. Decision notice FS50540688 dated 4 September 2014 relates to the Appellant's request for information in respect of court proceedings involving himself. The MoJ confirmed that it held some of the requested information but relied on various exemptions with respect to other aspects of the information. The Commissioner's considered that the MoJ did not hold some of the requested information and that other information that was held, was subject to the exemption in section 40(1)(personal data) and issued a decision notice to that effect.
33. The Appellant appealed to the FTT. In a decision dated 7 July 2014, the FTT dismissed the appeal. The FTT noted the similarity between the request in the appeal before it and the request considered in EA/2013/0283 and considered that the Appellant bore a large responsibility for any claimed failure on the part of the Commissioner to differentiate between the subject matter of the two requests. It went on to say that even if it had sympathy with the Appellant's complaint (which it stated it did not) it had no power to direct the Commissioner to reopen or broaden the scope of his investigation.
34. Decision Notice FS50552499 dated 14 January 2015, concerns a broad ranging request for information including all claims issued against HMCS and/or HMCS staff broken down as specified in the request. The Appellant also requested claims brought against the member of staff who he alleged had threatened him with "GBH and Serious and Violent Assault at Barnet County Court". The Commissioner found that the MoJ had properly relied on the exemptions cited.
35. The Appellant's appeal to the FTT was dismissed. The FTT noted the long history between the parties dating back to the Appellant's original request for information made on 29 November 2010. The FTT considered that the Commissioner had failed to address part of the Appellant's complaint and noted other shortcomings on the part of the Commissioner. The FTT allowed the appeal to this extent (although required no action to be taken

since by the time of the hearing, the matter was academic), but otherwise dismissed the appeal.

36. The decision notice in FS50558542 dated 27 January 2015, concerned the Appellant's request for information relating to a customer service poster displayed in some courts. The MoJ refused the request relying on section 14(1). Based on its review of the history of dealings between the parties, the Commissioner was satisfied that the MoJ had correctly relied on section 14(1) and that the request was indeed vexatious.
37. The appeal to the FTT was dismissed. The FTT stated that it had looked carefully at the history of correspondence and exchanges between the parties, and it agreed with the Commissioner that the key question to be considered when weighing up whether the request was likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The FTT agreed with the Commissioner's assessment and conclusion in this regard. It also noted that the Appellant had made serious allegations of misconduct and matters that called into question the MoJ's ability to deliver justice, but the FTT did not accept that the purpose or value of the request was directly related to those allegations, particularly in circumstances where the Appellant had made similar previous requests over a number of years. It also did not accept the Appellant's assertion that the Commissioner had deliberately withheld documentation.
38. The decision notice in FS50571695 dated 10 September 2015 concerned three requests for information. In this case, the MoJ relied on section 17(6) (where the public authority has previously issued a refusal notice stating that it is relying on section 14). The Commissioner decided that the MoJ had correctly relied on section 17(6) and so was not obliged to respond to the information requests in issue. The Appellant appealed to the FTT. In the course of the appeal, the MoJ accepted that it had unintentionally misinformed the Commissioner which led to the issuing of a consent order by the FTT stating that the MoJ was not entitled to rely on section 17(6).
39. In response to the directions (see paragraph 24 above), the Commissioner has explained that:
 - Excluding those complaints which resulted in the decision notices and Tribunal decisions referred to above, and the complaint which resulted in the present appeal, the Commissioner has received 14 separate complaints from the Appellant, regarding the MoJ under section 50 of FOIA between 24 May 2013 and 3 October 2016, and those complaints relate predominantly to HMCTS (previously HMCS) with one complaint in respect of the Judicial College.
 - Apart from the decision notices referred to above, there were 4 further decision notices issued by the Commissioner under references FS50538007, FS50574778, FS50580354, and FS50648628. We note that in all 4 decision notices, the Commissioner dismissed the complaint. We also note that in the case of the requests covered by 2 of the decision notices, the MoJ relied on section 14, and that this was upheld by the Commissioner.

- There has been an additional FTT decision on appeal by the Appellant from the decision notice FS50538007 concerning the request in respect of the Judicial College. The FTT struck out the appeal pursuant to Rule 8(3) of the First-tier Tribunal (General Regulatory Chamber) Rules 2009 as having no reasonable prospect of success (although the FTT stated that this did not imply any criticism of the Appellant but rather a misunderstanding on his part).

Findings

40. The only issue in this appeal is whether the Request is vexatious. A number of other issues raised by the Appellant are not within this Tribunal's jurisdiction.
41. FOIA does not define "vexatious". However, the Upper Tribunal ("UT") has offered guidance in three cases as to what the term means in the context of information requests – Information Commissioner v Devon County Council and Dransfield; Craven v Information Commissioner and Department of Energy and Climate Change, and Ainslie v Information Commissioner and Dorset County Council.
42. The three cases all concerned section 14(1) of FOIA and/or the corresponding provision under the Environmental Information Regulations 2004. The cases were heard by Judge Wikeley who treated Dransfield as the 'lead case' and set out helpful guidance on the meaning of "vexatious" which we have summarised below:
 - "Vexatious" is a word that takes its meaning and flavour from its context. In the context of section 14, "vexatious" carries its ordinary and natural meaning, within the particular statutory context of FOIA. The dictionary definition of "vexatious" as "*causing, tending or disposing to cause ... annoyance, irritation, dissatisfaction or disappointment can only take us so far*". As a starting point, a request which is annoying or irritating to the recipient may well be vexatious, but it depends on the circumstances.
 - "Vexatious" connotes "*manifestly unjustified, inappropriate or improper use of a formal procedure*". Such misuse may be evidenced in different ways.
 - The Commissioner's guidance that "*the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause provides a useful starting point so long as the emphasis is on the issue of justification (or not)*".
 - The purpose of section 14 is to protect public authorities and their employees in their everyday business. Thus, consideration of the effect of a request on them is entirely justified. A single abusive and offensive request may well cause distress, and so be vexatious. A torrent of individually benign requests may well

cause disruption. However, it may be more difficult to construe a request which merely causes irritation, without more, as vexatious under section 14.

- An important aspect of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request.
- A common theme underpinning section 14(1) as it applies on the basis of a past course of dealings between a public authority and a particular requester, is a lack of proportionality.

43. He stressed that this guidance is not intended to be prescriptive. He went on to say that the question of whether a request is truly vexatious may be determined by considering four broad issues or themes:

- the burden on the public authority and its staff;
- the motive of the requester;
- the value or serious purpose of the request; and
- any harassment or distress caused to the staff.

In paragraphs 29 to 45, he set out further guidance about each of these four themes.

44. The UT decisions in Craven and Dransfield were both upheld by the Court of Appeal (“CA”). The CA added 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 to any section of the public. It went on to say (at para 68), that *“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”*.

45. The CA went on to say that where a motive can be established, that may be evidence of vexatiousness, although if the request is aimed at disclosure of important information which ought to be publicly available, then even a “vengeful” request may not meet the test.

46. The UT revisited the issue of vexatious requests in CP (referred to at paragraph 24 above), on the question of whether the FTT had correctly given weight to the nature of the requests made and had conducted an appropriately rounded assessment in the light of the high hurdle required to satisfy section 14(1), and whether the evidential basis for the FTT’s decision was sufficiently clear. As already noted at paragraph 24 above, the UT stressed that the high hurdle for satisfaction of the section 14(1) test requires an appropriately detailed evidential foundation of the course of dealings between the requestor and the public authority. The UT also stressed that a compendious and exhaustive chronology exhibiting

numerous items of correspondence is not required, but there must be some evidence, particularly from the Commissioner, about the past course of dealings between the requestor and the public authority which also explains and contextualises them. The UT went on to say that a proper scrutiny of the number of previous FOIA requests requires more than a superficial count, and that section 14 should not be invoked without objective and careful justification.

47. We turn now to the facts of the present case, which for convenience, we will consider by reference to the UT's 4 themes, namely the burden on the public authority and its staff; the motive of the requester; the value or serious purpose of the request; and any harassment or distress caused to the public authority's staff.

Burden

48. There is very limited evidence before us as to the burden that would be caused by the Request in particular. The Commissioner has said that the first part of the Request is unfocused. The Appellant disputes this, but there is no evidence specifically from the MoJ as to what complying with the request would involve. The Commissioner has been up-front in saying, in his decision notice, that he has relied on the MoJ's arguments in connection with a different request, dealt with by the Commissioner under decision notice FS50558542. We have reservations about this approach. It seems to us that the Commissioner must consider each complaint on its own facts and though it may be appropriate to draw on the history of previous complaints, the evidence and arguments the Commissioner relies on should be set out in his decision notice without a general reference to submissions which may have been made with respect to a previous complaint.
49. Nevertheless, the Request must be seen in its totality, in the context of the Appellant's previous and likely future requests. This is inkeeping with Judge Wikeley's guidance in Dransfield (at paragraph 29):

"First the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor."

50. The evidence is that the Appellant has a longstanding grievance against the MoJ giving rise to numerous requests for information, lengthy correspondence, a large number of complaints to the Commissioner, and a number of appeals to the FTT. We note that with reference to the request dealt with in the decision notice FS50558542 in respect of which the MoJ relied on section 14(1), the MoJ expressed its concern about the large volumes of correspondence being received from the Appellant, and also expressed its concern that a response to that particular request would probably result in staff across the MoJ receiving e-mails from the Appellant, and those e-mails would place a burden on the MoJ's administration. We

have had sight of some of the correspondence and requests for information, but not all of it. What we have seen leads us to find without hesitation, that the Appellants' requests for information and related communications, are likely to have placed a considerable burden on the MoJ. Not only has the volume of correspondence been considerable, but it has been frequent, often lengthy and detailed, and also, it has often been overlapping in its nature and content. We have no doubt that the MoJ will have found the nature and extent of the correspondence difficult to manage and that dealing with the Appellant's requests and related correspondence will have been very resource intensive.

51. As in Dransfield, the future burden must also be considered. The Commissioner says that if the Request is complied with, it will generate further requests and correspondence. Having considered the history, we consider it more than likely that the Appellant will continue to engage in extensive correspondence with the MoJ about the manner in which it has dealt with his various complaints, and that in all likelihood, it will lead to further protracted correspondence from the Appellants, which will create a further burden on the MoJ.
52. We also consider, putting it bluntly, that the Request is largely a fishing expedition. The Appellant is looking for something, perhaps anything, to justify and further his grievance against the MoJ. In principle, this itself does not offend against FOIA. However, given the volume of material potentially encompassed within the scope of the first part of the Request in particular, we are in little doubt that it will provide fruitful ground for further questions, further requests, and further correspondence. We are also in no doubt, that this would mean that the parties would be embroiled in further back and forth correspondence for months, if not years, to come. In short, we are satisfied that the future burden is likely to be considerable.
53. We have considered whether and to what extent the nature and volume of the requests and other correspondence about the Appellant's grievance has been the result of failures on the part of the MoJ in its dealings with the Appellant's. As Judge Wikeley pointed out in Dransfield (at paragraph 30):

"... if the public authority in question has consistently failed to deal appropriately with earlier requests, that may well militate against ... a finding that the new request is vexatious".

54. We accept that there have been failures on the part of the MoJ. Certain of its shortcomings, including delays, have been recorded in the decision notices and FTT decisions referred to above. We also accept that some of the Appellant's requests may not have been answered and that he may have had to repeat them, However, that is a different matter from saying that the public authority has consistently failed to deal appropriately with earlier requests and is now simply complaining about the burden of dealing with the Request. We do not find, on the evidence before us, that that is the case.

Motive, value and purpose

55. For convenience, we have considered these two themes together because on the facts of the present case, as indeed in Dransfield, the issues are closely intertwined.
56. The motive of the requester may well be a relevant and indeed a significant factor in assessing whether a request is vexatious. Judge Wikeley noted in Dransfield, at paragraph 34, that *“the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request”*. He pointed out that there is a balancing exercise to be undertaken. On the one hand, it is important that public authorities should not be exposed to the irresponsible use of FOIA. On the other hand, a single request may quite legitimately prompt a further request for more information and a series of requests may well be reasonable when viewed both individually and in context as a group. In other circumstances, a series of requests may suggest that later requests have become disproportionate to whatever the original inquiry was. He described this as *“vexatiousness by drift”*. As regards the value or serious purpose of the request in terms of the objective public interest in the information sought, Judge Wikeley noted that in some cases, the weight to be attached to that value or purpose may diminish over time and subsequent requests may not have a continuing justification.
57. In our view, *“vexatiousness by drift”* aptly describes the present case. The Appellant may well have legitimate concerns about the way in which he was dealt with by the HMCTS, although it is not within our jurisdiction to make any findings about that. What we do find is that the Appellants’ quest has become disproportionate to that original purpose. We find that he is seeking something, or indeed anything, to justify his grievance.
58. To the extent that the Appellants assert that in addition to his private interests, there is also a public interest involved to expose shortcomings and wrongdoings within a public body, we do not agree that that is the case here. As already noted, the Request is not targeted at any specific area of alleged wrongdoing. Rather, it is speculative, to see what he might find.

Harassing or causing distress to the staff

59. In Dransfield, Judge Wikeley point out that although a finding of vexatiousness does not depend on there having been harassment or distress of the public authority’s staff, vexatiousness may be evidenced *“...by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive...”*
60. We note from the evidence before us, that the Appellant has accused the MoJ, at various times, of being cynical, dishonest, and fraudulent. He has alleged that the MoJ has been engaged in deliberate misrepresentation, criminal acts, perjury, a conspiracy to defraud and pervert the course of justice, persistent concealment, obstruction, dishonesty, mishandling of his complaints, deceit and lying. Some of these allegations have been directed at the MoJ generally, and others have been directed at specific individuals. He has also made various allegations against the Commissioner’s staff.

There is clearly a continuum to these allegations and several were repeated during the hearing.

61. We do not have any evidence before us, in this appeal, from any individual members of staff at the MoJ about the effect on them of such allegations. It might have been helpful to have had such evidence. Nevertheless, we consider that given the nature and frequency of the allegations, that they are likely to have been very distressing to the MoJ staff. We also find it likely that if the MOJ were to respond, the Appellant would not be satisfied, and that the allegations, and hence the harassment and distress, would continue. The fact that part of the Request was for details of individual staff members, also makes this likely.
62. For all these reasons, we are satisfied that the Request was properly characterised as vexatious. Accordingly, we uphold the Commissioner's Decision Notice and dismiss this appeal.

Other Points

63. The Appellant contends that the Commissioner deliberately ignored his actual complaint and the real issues. To the extent that the formulation of his Request (as set out at paragraph 3), is narrower in scope than the Appellant may have intended, we do not find that was as a result of any deliberate intent on the part of the Commissioner. The Appellant's letter containing the request was wide ranging and not at all easy to follow. In any event, given our finding that the MoJ was correct to rely on section 14(1), if the Request was wider in scope, that is unlikely to support a different finding.

Decision

64. This appeal is dismissed. Our decision is unanimous.

Signed

**Anisa Dhanji
Judge**

Date: 13 June 2017

Promulgated 15 June 2017