IN THE FIRST-TIER TRIBUNAL **Appeal No: EA/2015/0159**
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50566266
Dated: 24 June 2015

Appellant: **Jonathan Bishop**

Respondent: **The Information Commissioner**

Heard on the papers

Date of Hearing: **14, 15 August, 12 September**

Before

Chris Hughes

Judge

and

Jean Nelson & Paul Taylor

Tribunal Members

Date of Decision: **31 October 2017**

Date of Promulgation: **8 November 2017**

Subject matter:

Freedom of Information Act 2000

Cases:

Jonathan Bishop v Information Commissioner GIA/404/2016

Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 24th June 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction-procedural issues

1. In this case, unusually for this tribunal, a citizen Appellant insisted on preparing the bundle. Also at his request the tribunal administration made special arrangements for the sequential consideration by the members of the tribunal of the documents in the trial bundles over a period of time. The arrangement and labelling of the bundles was idiosyncratic and not conducive to the expeditious consideration of the case however the tribunal accommodated his requests.

Introduction

2. The Appellant, who holds a number of Master's degrees, applied to be a doctoral student at the University of Wales Institute, Cardiff (now Cardiff Metropolitan University, "the University"). As he had disabilities he disclosed certain matters and he underwent a needs assessment. He subsequently commenced his studies in January 2010. In August 2011 he made a complaint under the University Complaints Procedure about support he had received and about an employee of the University (in this decision referred to as AZ). His complaint was not upheld. He did not pursue the matter further until early 2014.

3. On 12 January 2012 he suspended his studies with the approval of the University for a period of a year to 11 January 2013, after that date he was neither enrolled, suspended nor withdrawn (Authorities bundle 187-209).

4. In 2012 he settled a claim against the University made under s6 of the Equality Act 2010 in the Employment Tribunal relating to his non-appointment as an associate tutor.

5. A further complaint was made by the Appellant in 2012. During the course of this he disclosed that he had another disability which he had not previously notified to the University. In subsequent correspondence the University

confirmed it was happy to "*review the reasonable adjustments required to complete your studies based on updated medical evidence."* On 17 October 2012 it confirmed that in the event that he wished to resume his studies the University- *"will be happy to review the reasonable adjustments you require to complete your studies based on updated medical evidence in the light of the additional condition…to ensure that the University's statutory duty is discharged and that you are appropriately supported."* (Authorities bundle page 284j). Over subsequent months the Appellant disputed the request to provide more complete medical records and complained. Following an investigation the University responded on 13 August 2013 confirming its view that the initial information provided by the Appellant was incomplete and confirming the need to access the information in order to discharge its duties. It stated:-

"Further and in view of Mr Bishop's conduct both during his studentship and his period of suspension/limbo, in particular towards AZ, the University requires sight of Mr Bishop's medical records to assess the risk that he presents to staff and patients."

6. The Appellant continued to refuse to allow access to his medical records and on 16 September 2013 the University approved his withdrawal from his academic programme. The Appellant appealed against this decision. By a decision of 19 March 2014, which thoroughly reviewed the history, including issues of disclosure of medical records and conduct towards two female members of staff (AZ and one other), the investigating officer of the University upheld the withdrawal.

7. In May 2013 he had sent the University a questionnaire under the Equality Act. He subsequently issued proceedings against the University and his local authority. In defending the County Court claim the University's solicitors described his claim as "*labyrinthine in terms of its structure and content*" (submissions for 9 July 2014 hearing, "authorities bundle" page 211). The tribunal considers that is a fair assessment of the Appellant's approach to this appeal. The Court Order (page 121) records that on the Court indicating that the action was totally without merit the Appellant's Counsel discontinued the proceedings. The Appellant subsequently corresponded with the Court about

that discontinuance and in a letter of 5 August 2014 the presiding judge stated:-

"I do note as recently as 18 July 2014, in response to a letter from Mr Bishop in another case I observed that an appeal by Mr Bishop which I heard in October 2013 was dismissed and was totally without merit; and I stated, "It is a matter of concern that Mr Bishop should have brought two claims each of which has been dismissed as totally without merit."

It is not appropriate for a litigant to seek advice from the court. Whilst I have responded courteously to successive letters from Mr Bishop I do not propose to respond further to correspondence from him whether in the present or other cases. The resources of the court are precious and not to be abused."

8. Concern about the Appellant's behaviour resulted in a complaint to the police and on 4 October 2013 Cardiff Magistrates Court issued a restraining order against him. As varied on 2 December 2015 this now prohibits him from:-

"contacting AZ directly or indirectly by any means;

Instructing or encouraging any third party to contact AZ directly or indirectly by any means. This order lasts until further order."

9. In addition to this order AZ brought proceedings in the County Court which resulted in a consent order in the form of an injunction of 12 June 2014 by which the Appellant:-

"is forbidden by himself or by allowing, inciting and/or encouraging any other person from

Writing, creating, posting and/or publishing any articles (including, but not limited to internet articles and/or postings), relating to AZ (in her professional capacity or otherwise)

This order will remain inforce indefinitely"

10. In early 2014 the Appellant contacted the University with respect to his 2011 complaint. On 28 March 2014 the University issued a "Completion of Procedures Letter" to enable him to raise the issues with the Office of the Independent Adjudicator for Higher Education (OIA). He complained to the OIA on 3 April 2014 and on 24 June 2014 the OIA issued a final decision

finding the complaint was not justified (Evidence bundle 316-320). A subsequent complaint to the OIA was declared ineligible on 17 November 2014 on the basis that it had been the subject of court proceedings and those proceedings had been completed (Evidence bundle 372-375).

11. The Appellant sought permission to apply for judicial review of the OIA's decision. This was refused on the papers and then, following an oral hearing, refused by a judgement of 1st May 2015.

The request for information

12. On 30 October 2014 the Appellant wrote to the University from an email account in the name of Jonathan Bishop:-

"Dear Sirs

I would be grateful if you could provide me with copies of the DSA audits that are carried out each year for the period of 2009 to present.

Best Wishes

Jonathan Bishop"

13. The University responded explaining that it did not hold any such information. Following clarification by the Appellant the University concluded that what was being sought was the annual audit of its Assessment Centre which is carried out against a quality assurance framework by the relevant accreditation body. The University then confirmed that it did hold such information but relying on s43 FOIA confirmed that the information was exempt from disclosure; it also indicated that it considered the request vexatious under s14(1).

14. On 24 December 2014 the Appellant complained to the Information Commissioner (ICO) who reviewed the course of dealings between the Appellant and the University in the light of issues considered in the case of *Dransfield*. In her decision notice (Evidence Bundle 149-155) she concluded that he had been unreasonably persistent in seeking to re-open issues which had been comprehensively addressed, these included a County Court action which ended in a judgement that his case was without merit; he had subsequently complained to the court and then criticised the district judge leading to a refusal to correspond with him by the court authorities. The

University argued that all his actions against them had been unsuccessful, including his attempts to pursue his complaints through the OIA (paragraphs 15-22). He had made approximately 21 subject access or FOIA requests – often complicated by supplementary questions, between September 2013 and January 2015. Until the University decided to rely on s14 it had striven to assist him as much as possible (paragraphs 23-26). His pursuit of a personal grudge against a member of the University staff had resulted in a Magistrates' Court order against him in October 2013 and an injunction in June 2014. There had also been unfounded statements against another University officer and other defamatory material (27-32). He was deliberately trying to cause annoyance to the University (paragraphs 33-35). He had made abusive comments causing distress to individuals (paragraphs 36-37). The University considered that there was no proper motive for the requests; it suggested that his intention was to cause damage to the University by misrepresenting information provided and that he was seeking to re-open complaints which had been conclusively resolved. While there was some public interest in the subject matter of the requests the outcome of the audit, (pass/fail) was published by the accreditation body which agreed with the University that full reports should not be disclosed (paragraphs 38-41).

15. The ICO, having weighed all the circumstances in an holistic fashion, concluded that:-

"a strong case has been presented to demonstrate that the request is vexatious. It was not the intention of the legislation that individuals should be allowed to pursue personal grievances to an unreasonable extent through the use of FOIA…

In this case the Commissioner does not consider that sufficient weight can be placed on any serious purpose served by the request to justify the disproportionate burden of disruption, irritation and distress it imposes…"

The appeal to the Tribunal

16. On 30 June 2015 the Appellant made a complaint against the Assistant Information Commissioner for Wales. He submitted a notice of appeal to this tribunal on 27 July stating that he was acting "*on behalf of the Crocels*

Community Media Group". In the "skeleton argument" which formed his grounds of appeal he named the University as Respondent, he designated the female Assistant Information Commissioner as "*First Interested Party*" and AZ as "*Second Interested Party*". In an extensive document he set out his grounds for appeal which may be properly summarised as:-

- The Assistant Information Commissioner was biased and did not afford him a proper opportunity to respond to the University's position,
- The University had misdirected the Assistant Information Commissioner,
- AZ had a vendetta against him,
- the University had discriminated against him as well as supporting the "*unfair and unlawful actions*" of AZ.

17. In his notice of appeal he also argued that as an academic and a journalist it was not possible for his request to be vexatious; however the essence of his case was that his requests were not vexatious because the University and its staff had acted unreasonably to him.

18. In the response to the appeal the ICO denied bias (Evidence bundle 314A-N – misleadingly listed in the index and contained in a section "*Witness Statements and Case studies*"). She argued that she had seen a substantial quantity of background documents supplied by the University and that there was abundant evidence from the court proceedings. She could not go behind the findings of the courts but these on their own showed an unreasonable degree of persistence in pursing his complaint against the University and had caused significant distress to staff. The "*Pigs*" email (see below) showed his intention to continue his campaign against the University.

19. The ICO did not accept that the blame for the dispute lay with the University, drawing attention to the consistent findings against the Appellant by various bodies. She drew attention to an attempt by the Appellant to judicially review the OIA and an unsuccessful complaint to the IPCC against the actions of the Police as evidence of his tendency to pursue every avenue of complaint with an unreasonable degree of persistence.

20. In considering the Appellant's claim to journalistic purpose she noted that the Appellant had used his Crocels website unfairly by making unfounded allegations against the University and there was no reason to believe his future conduct would be different if the information was disclosed. She noted a statement by the Appellant in his appeal documents (Authorities bundle 11N - Exhibit A – skeleton arguments 19(b)):-

"it is not possible for any distress to be caused to Second Interested Party because the Appellant agreed to the wording of an injunction order on 4 October 2014 preventing him writing about her….This injunction is currently subject to review in legal action through the case of Jonathan Bishop v DPP"

In the light of this the ICO concluded that he continued to desire to post articles about AZ. She therefore concluded that limited weight could be given to journalistic purpose, given the unfair use which the University had tolerated for a considerable period.

21. With respect to academic purpose the ICO was sceptical as to the value of a draft article by the Appellant for which he claimed to want the information stating that it appeared to be:-

"a vehicle for pursuing his grievance against the University. It seeks to draw broad conclusions that are critical of the University on the basis of the Appellant's own experiences; yet third-party adjudicators have ruled that the appellant does not have a valid complaint about those experiences"

The request was simply in furtherance of the dispute and only limited weight should be given to this purpose.

22. The ICO reviewed the heavy burden placed on the University and its staff by the Appellant's actions and concluded there was only the appearance of a serious journalistic or academic purpose; the Appellant's motive was causing harm, the burden imposed by the request was disproportionate.

23. In reviewing the Appellant's claim under Article 10 the ICO considered that the Article 10 right was engaged by the Appellant's claimed intention to use the material for journalistic/academic purposes however the analysis in *Dransfield* was compliant with Article 10. The protection of the University's resources

was a legitimate aim under Article 10(2) and the application of s14(1) also protected the University and its staff from unjustified harm to their reputations. Furthermore any interference in his Article 10 right to free speech was slight, he was being prevented from obtaining some material which might form the basis of publication. The application of s.14 was proportionate to the circumstances.

24. In response the Appellant lodged a document presenting further arguments of bias against the ICO, asserting the ICO had misrepresented the position with respect to his proceedings brought against the University. He argued that the ICO had been selective in the use of evidence and he emphasised his academic and journalistic credentials; he also disputed the reliance on the "*Pigs*" email, claiming its use was a breach of his Article 8 rights. He claimed that the University had acted maliciously and compared the University unfavourably with other Universities in the approach to providing him with what he wanted.

The Appellant's Witness Statements

25. In support of his case the Appellant lodged three witness statements in addition to his own. The statement by his friend Ashu Solo (dated 5 October 2015) is dealt with below. The statement by his father asserts that the way the University dealt with his son's disability was below the standard expected. One from another former PhD student at the University recorded her difficulties due to the departure of her supervisor, the closure of her department and her own ill-health. The University suspended her and she states that the OIA concluded that the University had acted unfairly.

26. The Appellant's statement of 6 July 2017 deals at length with training he has received with respect to FOIA, argues that the University should not be allowed to rely on the commercial interest exemption and asks the ICO to justify reliance on it.

27. He argues that any personal motive he has is irrelevant since the material would be published by Crocels. He gives details of the interlocking corporate structures ("Evidence" bundle page 322):-

"…I own 100% of Jonathan Bishop Limited which owns 50% of Crocels Press Limited, which owns 100% of Crocels news, LLC. The other 50% of the Crocels Press Limited is owned by Centre for Research into Online Communities and E-Learning Systems (Wales) Limited, which is a company limited by guarantee without shareholders. All these companies are members of the Crocels Community Media Group."

28. The records for the Centre for Research into Online Communities and E-Learning Systems (Wales) Limited at Companies House lists the Appellant as a person with significant control over the company (Evidence Bundle pages 390-393).

29. He argues that:-

"Everything the Respondent had communicated to the Tribunal has suggested it is far from motive and identity blind. This therefore means I am entitled to make a criminal complaint against the Respondent"…

30. He criticises the ICO and argues that:-

"the submission of documents by the Respondent was seeking to discredit me using the "order effect" to create a "false narrative". On this basis I took control of preparing the bundle so I could order the evidence in an objective and neutral way…I will not allow the Tribunal to re-introduce this "order effect" by accepting the new bundle documents in the order and format provided by the Respondent and will be appealing to the Upper Tribunal if it does not allow me to re-categorise the new documentation supplied by the Respondent into the format that I have used, which is virtually identical to that in the Charity Commission case that I also brought on behalf of the Crocels Community Media Group..

I honestly believe that the reasons the Respondent does not like the documents in the order I presented is that it makes it difficult for them to claim me as vexatious because the documents on which they intend to rely to defame me as vexatious are among other documents of the same kind which shows the actions of Cardiff Metropolitan University staff to be both malicious and outside the public interest"

31. The final part of his witness statement is headed *"Crocels Community Media Group as a Party (Appellant)".* He confirms that this entity is responsible for

the *"strategic direction"* of the various other bodies and he is its CEO. He states:- *"I was requesting the information from Cardiff Met on behalf of Crocels for use by Crocels News and Crocels Research, which would likely have been used by me in elections through sharing the news articles and research papers produced no different to how one would share articles produced by the mainstream media. By looking at the Companies House record for Crocels research and the State of Delaware certificate of incorporation of Crocels News, which was previously part of the Crocels Press Limited, you can see that I am a person with significant control and I exercise that control through the Crocels Community Media Group."*

32. He then proceeds to formulate his key argument:-

"The Tribunal has erred by not accepting I was acting on behalf of Crocels when making my request to Cardiff Met and not on behalf of myself. This is the essence of the case – my Freedom of Information Requests on behalf of Crocels have nothing to do with the Subject Access Requests on behalf of myself. Therefore I could not have been vexatious because the requests were not to inundate Cardiff Metropolitan University but to hold them to account as a public authority through news and data reporting, as it has responsibility for administering public funds".

The issues for the Tribunal

33. One issue which the Appellant has repeatedly returned to is the correct identification of the Appellant. The factual position is straightforward. The original information request was signed Jonathan Bishop and the decision notice was sent to him as complainant. In an email to the Registrar of the Tribunal of 14 May 2017 the Appellant submitted that he had sought information on behalf of Crocels Community Media Group which consisted of various parts; he was CEO of the Group. He argued that:- *"my Freedom of Information Requests on behalf of Crocels have nothing to do with the Subject Access Requests on behalf of myself. Therefore I could not be vexatious because the requests were not to inundate Cardiff Metropolitan University but to hold them to account as a public authority … Any attempt to hold AZ to account using the data requested should be taken in the context [redacted information about her circumstances]…and therefore is uniquely different to*

any other employee of Cardiff Metropolitan University….in the case of AZ who it was and would have been in the public interest to disclose her actions…".

34. This attempt to show himself as the CEO of a media organisation does not conceal the fact that this group is in essence a shell of virtual entities; it is little or no more than himself. In an email to Mr Solo in late 2013, shortly after the first order of the Magistrate's Court (bundle page 84) he set out his approach to AZ the police and the functions of Crocels; in the process he clearly revealed that a more realistic view would be that his media empire is a fantasy:-

"I feel like dedicating my life to destroying the police.

I now know what creates criminals – the pigs treating the innocent as if they are guilty.

…she is a bitch that will play the part of a woman to get her way and then play the victim to get her way the next – that is what a bitch is …

Some people turn to criminality when they are treated as I have been, but I am going to turn to the law and use it against them, I am going to grow my media empire and use it against them. I will turn Crocels into a mega-corporation and use it against them"

35. In his witness statement Ashu Solo, who forwarded the email to AZ in the belief that it was a breach of the restrictions placed upon the Appellant, sought to justify the language while acknowledging the realities of the Appellant's world:-

"The language used in relation to Jonathan Bishop's "The Pigs" email is nothing out of the ordinary. Jonathan Bishop and I are civil rights campaigners and social reformers and we believe the policing system has failings. This language is regularly used to refer to corrupt police. A lot of what we say via email and instant messaging is fantasy, giving us an outlet from the many frustrations that come from being in an imperfect world.

…Bishop is not a sexist, as he is a women's studies researcher and a social scientist, so it would not be helpful to his career if he were as most of his peers are women."

36. It is helpful to consider why Mr Solo sent the email to AZ. In his covering email he stated:-

"…following is an email which I received from Jonathan Bishop about you and the police in which he rudely refers to you as a "bitch" and rudely refers to the police as "pigs". I understand that you had him criminally charged, so I thought you would be interested in seeing this email. I believe that this email violates his bail conditions, which prohibit him from sending emails about you. It's obvious he's referring to you because you're the one who made a complaint to the police about him and he told me this was about you. I would be happy to testify that Jonathan Bishop sent me this email and told me that it was about you."

He was clearly concerned about Mr Bishop and the possibility that he was committing a criminal offence. He therefore sent the material to the victim to inform her of the conduct. There can be no question of any breach of the Appellant's Article 8 rights or any rights of Mr Solo.

37. The right of appeal against a decision notice rests with the parties to it, in this case the University and the Appellant. The Appellant's grandiose claim to a media group cannot vest his right of appeal in any other legal person. The issue has been extensively ventilated and resolved at an earlier stage in these proceedings when the Appellant successfully appealed to the Upper Tribunal against a decision of the First-Tier tribunal not to permit him to reinstate his appeal. In his decision Judge Wikeley held (paragraph 19):-

"There is no justifiable basis for any other party being added. In that context I note that the Registrar refused an application for Crocels Media Group and Crocels News LLC which appear to be emanations of Mr Bishop, to be joined as additional appellants (ruling dated 26 January 2016). Upper Tribunal Judge Mitchell also refused an application for Crocels Community Media group to be substituted as the appellant in these proceedings when he gave permission to appeal. Neither of those rulings has been appealed. They were both eminently justified for the reasons they were given."

38. The issue of the parties to this appeal has been definitively settled by that decision. There is no more to be said.

39. In considering the Appellant's arguments it is important to disentangle the key issues from the over-elaboration which he brings to all aspects of his dispute with the University.

40. The claim of bias against the ICO and in particular the officer responsible for the ICO decision notice arises in part out of the ICO's method of conducting investigations. This involves gathering information from the complainant, obtaining the public authority's response and then, unless there are matters requiring clarification, to proceed to a decision. The Appellant thinks it is unfair since he did not have the opportunity to attempt to rebut the University's material. The tribunal is unconvinced by the Appellant's position with respect to this. In any event he has now had the opportunity to present all his material and argument to the tribunal, which has heard the appeal on its merits, so there is no practical force to this ground of appeal.

41. The history of the various complaints against the University is exhaustively documented. Despite the Appellant's penchant for selective quotation and interpretation the simple fact is that the University's position has been vindicated repeatedly. The Appellant has been unsuccessful in arguing that he has been unfairly treated.

42. Furthermore the courts have been concerned about his behaviour towards AZ and have put in place protection for her from his harassment. He has continued to show hostility towards her by striving to involve her in the proceedings (for example by including her name as part of the heading of documents he has filed in this appeal) and, in a witness statement as recent as 6 July, he clearly stated that the information request was an attempt to hold AZ to account. In the circumstances it is impossible to see this as anything other than a desire to publish further online material about AZ, (whether he would do so in breach of a court order or would do so in the event that the order were discharged) this is clearly an intention to continue to harass her and cause her further distress.

43. The tribunal, having considered the material the Appellant has incorporated in the bundle reflecting his journalism and academic interests, shares the view of

the ICO that it is used as a vehicle for his campaign against the University and related to his feelings of personal grievance.

44. These feelings of personal grievance are marked, he forms rigid over interpretations of legal or procedural rules and shows an inability to understand the reality of different rules applying in different circumstances, exceptions to rules and conditions necessary for rules to apply. He is unable to accept that other interpretations of the situation from his own may have validity and appears to have difficulty in understanding or valuing the impact his conduct has on other people. It is notable that a number of the individuals with respect to whom he has expressed a sense of grievance are women.

45. In the light of this history, the ICO, in her decision notice has, applying the guidance in Dransfield, attempted to integrate the position in a coherent narrative which properly balances the public interest of protecting the resources and staff of the University against the minimal public interest in disclosure of the information. The journalistic and academic claims of the Appellant and his assertion of an Article 10 right are properly balanced by the ICO's consideration of s14.

46. The tribunal is satisfied that the ICO's decision is correct in law. Her analysis of the facts is full and sufficient. This appeal is entirely without merit and is dismissed.

47. In the light of the Appellant's conduct in bringing and conducting this appeal the ICO is invited within 21 days of the date of this decision to make observations with respect to the issue of costs and to indicate its costs of defending this appeal. When the tribunal has received this information it will make further directions to give the Appellant time to respond to the question of whether costs should be awarded and if so the amount of any costs.

48. Our decision is unanimous

Judge Hughes
[Signed on original]

Date: 31 October 2017