



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

**Appeal No: EA/2018/0132**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50725990  
Dated: 6 June 2018**

**Appellant: Farah Damji (aka Dan)**

**First Respondent: The Information Commissioner**

**Second Respondent: Ministry of Justice**

**Heard at: Court 5, Royal Courts of Justice**

**Date of Hearing: 27 November 2018**

**Before**  
**HH Judge Shanks**  
**and**  
**John Randall and Paul Taylor**

**Representation:**

**Appellant/First Respondent: Did not appear**

**Second Respondent: Christopher Knight**

**Date of decision: 8 January 2019**

**Subject matter:**

Freedom of Information Act 2000 (“FOIA”)

Section 14: vexatious requests

**DECISION OF THE FIRST-TIER TRIBUNAL**

For the reasons set out below the Tribunal dismisses the appeal.

## **REASONS FOR DECISION**

### **Background**

1. The Appellant, Ms Damji, was convicted of three counts of harassment by stalking and was sentenced to five years imprisonment on 19 August 2016. On 27 April 2018 she was released on licence but she was recalled on 31 July 2018 for failing to comply with the terms of the licence. She is currently incarcerated in HMP Downview. She has previously served other prison sentences and in 2014 and 2015 she had an offender management unit (“OMU”) officer who we shall refer to as M.
  
2. On 23 September 2017 she made a request to the Ministry of Justice under FOIA for information about M in the following terms:

**... [M] is an unfit person to act as an OMU. She is damaged and inexperienced and particularly malicious because of her immaturity. She is also clinically obese and unfit physically. Please disclose under FOIA the following:**

  - (1) **Rate of reoffending of women under her supervision 1 year, 2 years, 5 years**
  - (2) **Rate of success in finding housing for women under her supervisions**
  - (3) **Rate of success for women who complete their licence periods under her supervision**
  - (4) **Health and fitness records confirming that she has passed fitness tests required to work in a prison**
  - (5) **Rate of success for women under her supervision who have completed drug rehabilitation courses and are no longer dependent**
  - (6) **Number and nature of all complaints whether upheld or not, who investigated and the outcome of the complaints including actions taken.**
  
3. The Ministry responded in a letter dated November 2017 stating that the request was “vexatious” and that they would not therefore deal with it further; in particular they stated that the request involved “abusive language”, “personal grudges” and “unfounded allegations”. Ms Damji sought an internal review in a letter dated 5

December 2017; on 10 January 2018 the reviewer upheld the decision that the request was vexatious on the same ground and also on the basis that there was “unreasonable persistence” in requesting a review “... despite being told that the FOIA [was] not the correct vehicle for gathering information in order to pursue a complaint about a member of staff.”

4. Ms Damji complained to the Information Commissioner by letter dated 8 February 2018 and the Commissioner upheld the Ministry’s position in a decision notice dated 6 June 2018. Ms Damji appealed against the Commissioner’s decision on 4 July 2018. The substantive issue for this Tribunal is whether the Ministry and the Commissioner were right to categorise Ms Damji’s request as vexatious.

#### **Application for adjournment**

5. Ms Damji stated in her notice of appeal that she required a hearing. After her recall the Tribunal staff went to considerable lengths to organise this hearing at the RCJ so that she would be able to attend as a serving prisoner.
6. On 15 November 2018 the Tribunal received a letter from her saying that she wished to withdraw her appeal pending the outcome of investigations by the ICO and SRA into alleged breaches of the GDPR by the Government Legal Service. She stated: “Please confirm that the listing for 28.11.18 has been vacated, pending my further application. If you persist in continuing, I will not appear and will instantly appeal as this would be a breach of my Article 6 rights ...” The Registrar took this as an application for an adjournment. In directions issued on the same day she said the appeal would remain listed and that Ms Damji could apply for an adjournment in person to the panel. In a further letter dated 14 November but apparently not received until 19 November 2018 Ms Damji stated that it was against the interests of justice for the appeal to proceed while the investigations by the ICO and SRA were proceeding and said that her parole hearing would take place in December and asked that the appeal hearing be adjourned pending the outcome of that hearing. We have not seen any response to that communication by the Tribunal.

7. On the morning of the hearing we learnt that Ms Damji would not be attending and were provided with a standard form Court Waiver signed by Ms Damji. The reason given for her decision to waive her right to attend court was stated as: “HEARING DISCONTINUED while I am in custody – I can’t properly instruct my solicitors/Buzzfeed from prison. This prison has no A2J (sic) facilities”.
8. Before hearing Mr Knight on the substantive appeal, we therefore considered whether or not we should continue with the hearing in Ms Damji’s absence or adjourn to another date. We noted that the date of the hearing had been arranged for some time and the venue was organised for Ms Damji’s convenience. The Ministry had instructed counsel and attended the hearing. There was substantial written material and representations before us. We did not understand the significance of the complaints against the GLS in relation to the substantive issue before this Tribunal. The outcome of any parole hearing was inevitably uncertain and it was not appropriate to delay this appeal on the speculative basis that she might be released soon. As far as the records show Ms Damji has never instructed solicitors on this appeal and we did not understand the significance of Buzzfeed to the hearing. There was nothing to prevent her appearing in person to explain further why she required an adjournment but she chose to remain at HMP Downview.
9. In all the circumstances we concluded that it would not be unfair to Ms Damji and would be in accordance with the “overriding objective” to proceed with the hearing without further ado.

### **Substantive appeal**

10. We have had regard to the guidance from the Upper Tribunal and the Court of Appeal in the familiar *Dransfield* case (see [2015] EWCA Civ 454) in relation to the question whether Ms Damji’s request is vexatious, and in particular the four broad themes of a) the burden on the public authority (including the context and history of the request), b) the motive of the requester, c) the value or serious purpose of the request, and d) any harassment of or distress to staff. With respect to the last theme, vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, using

intemperate and offensive language and the making of wide-ranging and unsubstantiated allegations of criminal behaviour or other reprehensible conduct.

11. We considered the material in the hearing bundle and the Ministry's response document dated 13 September 2018 and we were taken through the correspondence carefully by Mr Knight.
12. The request on its face is rude and abusive and includes serious unsupported allegations against M. The intemperate and aggressive tone and the insults and abuse continue in similar vein in the request to the MOJ for a review (p34 in our bundle) and in the complaint to the Commissioner (pp39/42), with M being described variously as "deliberately malicious", "gross and unpleasant", "vindictive and nasty", and a liar. The correspondence is littered with threats and insults against the MOJ and its employees and is inappropriately copied to the media.
13. Given the terms of the request and the time since Ms Damji was involved with M it is hard to resist the inference that the request is borne of an obsessive grudge against M rather than anything else. In any event, even if the motive for the request was a genuine concern about the prison and probation services, it is hard to see what value the request would have, given that it is directed to the record of one particular officer, and it is clear on its face that all or most of the information sought will be exempt under section 40 of FOIA.
14. Further, it is clear that the request comes against a background of a long history of FOIA requests and that dealing with it would represent a significant burden for the MOJ and would be likely to involve harassment and distress to the staff.
15. Having regard to these considerations, the Tribunal finds that Ms Damji's request is very clearly vexatious.

16. Ms Damji's notice of appeal does not raise anything that causes us to reconsider our view; indeed, quite the reverse: she continues in the same vein by describing the Commissioner as a "lapdog poodle" in her notice of appeal. At p 60 in our bundle there is a letter from her to the Commissioner dated 3 April 2018 in which she offers an apology for any offence caused concerning the FOIA request: the sincerity of that apology is rather undermined by her reference in the same letter to "malicious and vindictive people" in the OMU post and her description of the Commissioner as a "lapdog poodle" two months later in the notice of appeal.

### **Disposal**

17. We have no hesitation in unanimously dismissing the appeal.

HH Judge Shanks

8 January 2019

Promulgated: 8 January 2019