



Neutral citation number: [2024] UKFTT 359 (GRC)

Case Reference: EA/2023/0401

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights Tribunal**

**Heard on the papers on 19 April 2024.  
Decision given on 03 May 2024.**

**Panel: Brian Kennedy KC & Specialist panel members Susan Wolf & Dr. Aimee Gasston.**

**Between:**

**NIGEL HARRIS**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

The Appellant as a Litigant in person in his written Grounds of Appeal dated 18 September 2023.

The Respondent: Joseph Lynch-Watson by way of written Response on 13 December 2023.

**Result:** The appeal is dismissed.

## REASONS

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### Introduction:

1. The Appellant appeals under section 57 of the Freedom of Information Act 2000 ("FOIA"), against the Decision Notice with reference IC-249202-K6P5 dated 30 August 2023 (the DN) issued by the Information Commissioner (the Commissioner). In the DN the Commissioner concluded that the Rail Accident Investigation Branch of the Department of Transport, the Public Authority ("PA") herein, was entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA) [vexatious request] and was therefore not required to respond to the Appellant's request for information (DN §1-3).
2. As required by rule 23(3) of the 2009 Rules, the Commissioner states that he opposes the Appellant's appeal and thereby invites the Tribunal to dismiss it.

### Factual Background to this Appeal and Decision Notice:

3. On 4 July 2023, the complainant wrote to the PA and, referring to two specific accident reports, requested information in the following terms:

*"Edinburgh 05/2020: 1. What is the maximum braking performance of the dynamic brake in percent g, on a level gradient with mu above 0.13; regarding the class 92 locomotive running light. ( I suspect it is 11 percent g?) 2. What is the mass of the consist: class 92 locomotive and 8 mk 4 coaches, with 120 Pax, in metric tonnes. ( I suspect it is 480 tonnes?)*

*Loughborough 10/2020 1. Was the rear locomotive running. 2. 20 mph past the signal for 200 m is a retardation of 0.2 m/s/s, this does not comply with your field test of 0.45 m/s/s, please explain. 3. How do you know the consist was set up properly for single pipe operation. ( I suggest the rear loco exhausted the internal tanks as they are not charging)."*

4. The PA responded on 7 July 2023. It refused the request as vexatious – a stance it upheld following an internal review.
5. The Commissioner considers that the PA's reasons for applying the exemption, the factual basis for which the complainant has not challenged, provides adequate grounds for engaging section 14.
6. The request has, on the face of it, a public value. However, as the Commissioner indicated, the value of a request is not a trump card and will be outweighed if the

request has no serious purpose or if it would be disproportionately or unduly burdensome.

7. The PA has referred to a considerable burden arising from correspondence from the complainant. Some of this correspondence appears to be related directly to the accidents in question, other correspondence appears to have related to the underlying assumptions used in these and other reports the PA has produced. The complainant has not challenged the extent of the correspondence sent, but he has argued that it was justified in the circumstances.
8. The Commissioner further considers that the request, viewed objectively, lacked a serious purpose.
9. The Commissioner notes that the PA has drawn attention to the lack of any decision, by an independent body, upholding the substance of the complainants' concerns. This request has been made because the complainant again disagrees with the findings of the PA and the methodology used. It is his right to disagree if he wishes to do so but using FOIA to make additional requests - especially where a considerable amount of information is already in the public domain - is not, it is argued, an appropriate means of addressing any such concerns. Using the legislation as a means of browbeating the PA into supporting a particular stance is not an appropriate use of the facility or procedure.
10. The Commissioner considers it is evident from the correspondence that, all other things being equal, the complainant is highly likely to continue to send correspondence and further information requests on this matter. The PA have gone as far as it can in addressing the complainant's concerns and it is not clear why, given the entrenched positions of the parties, further correspondence is likely to lead to any form of resolution or shed any further light on the matter.
11. In addition, the Commissioner notes that several elements of the request do not seek information in recorded form - further reducing the value of complying with the request.
12. The Commissioner is therefore satisfied that the request was vexatious and the public authority was not obliged to respond to it.

### **Legal Framework:**

13. Section 14 FOIA:

1. S1 FOIA General right of access to information held by public authorities:
  - (1) Any person making a request for information to a public authority is entitled;
    - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
    - (b) if that is the case, to have that information communicated to him.

S14 FOIA Vexatious or repeated requests:

- (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.

14. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “*vexatious*” could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal. The Commissioner submits that in all the circumstances of this case the request was vexatious further to the binding case law set out by the Court of Appeal in *Dransfield v Information Commissioner & Devon County Council* [2015] EWCA Civ 454 (which did not depart from the Upper Tribunal findings). The Dransfield definition in the UT establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. Dransfield also considered four broad issues at § [45]:

*“(1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.”*

### **Grounds of Appeal:**

15. The Appellant contends that the PA failed to answer his questions. The Appellant states that he seeks to reveal the truth.

16. The Appellant makes reference to the Loughborough Report and provided evidence to support his appeal. The Appellant also refers to the Edinburgh report. The Appellant also notes that the information is readily available.

**Commissioner's Response:**

17. The Commissioner has reviewed the case papers and the Appellant's appeal documentation. Having done so, the Commissioner opposes this appeal and stands by his DN.

18. The Commissioner provides, alongside his Response form, a bundle of documentation and a copy of his own non-statutory guidance about section 14 FOIA, to assist the Tribunal in its determination of this matter. The Commissioner does not propose to make any further representations or submit further documentation.

19. Should the Tribunal have any questions or matters which are not answered by the papers before it, the Commissioner indicates the Tribunal may choose to exercise its powers under rule 5(3)(d) of the Tribunal Rules to permit or require a party or another person to provide documents, information or submissions to the Tribunal.

20. If, contrary to the Commissioner's position, the Tribunal concludes that the request is not vexatious under s. 14(1) FOIA, the Commissioner would invite the Tribunal to order steps obliging the public authority to issue a fresh response to the request not relying upon s. 14(1) FOIA.

**Appellant's Reply**

21. The Appellant stated that he wished to highlight rail safety issues in his appeal. The Appellant noted that the calculations used are nothing more than ordinary level mathematical physics type equations.

22. The Appellant contended that the reports are flawed and fail to highlight safety issues.

23. The Appellant argues that they should be amended to address the shortfall.

## Discussion:

24. The Tribunal regards the issues for consideration to include the following;

- The key purpose of the request seems to be to further an argument/debate which has become a personal interest which is already in the public domain and a concern.
- The evidence of the burden of the series of requests on a small authority.
- Is the request effectively seeking an opinion on the appellants' own views rather than underlying evidence or more particularly: "*the specific information held*" by the PA.
- The evidence of the PA having dealt fairly with requestor.
- The fact that s.14 FOIA should not be interpreted as a blanket exemption; it only relates to the case in point.

## The burden:

25. First, the present or future burden on the PA may be inextricably linked with the previous course of dealings. Thus, the context and history of the particular request, in terms of any previous course of dealings between the individual requester and the PA 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.

26. As to the *number*, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. Volume, alone, however, may not be decisive. Furthermore, if the PA in question has consistently failed to deal appropriately with earlier requests, that may well militate against such a finding that the new request is vexatious.

27. As to their *breadth*, a single well-focussed request for information is, all other things being equal, less likely to run the risk of being found to be vexatious. However, this does not mean that a single but very wide-ranging request is necessarily more likely to be found to be vexatious – it may well be more appropriate for the PA, faced with such a request, to provide advice or guidance on how to narrow the request to a more manageable scope, failing which the costs limit under section 12 might be invoked.

28. As regards the *pattern*, a requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with email traffic, is more likely to be found to have made a vexatious request.
29. Likewise, as to *duration*, the period of time over which requests are made may be significant in at least two ways. First, a long history of requests e.g. over several years may make what would otherwise be, taken in isolation, an entirely reasonable request, wholly unreasonable in the light of the anticipated present and future burden on the PA. Second, given the problems of storage, PAs necessarily have document retention and destruction policies in place, and it may be unreasonable to expect them to e.g. identify whether particular documents are still held which may or may not have been in force at some perhaps now relatively distant date in the past.
30. In this case there is evidence, undisputed by the requester, that there has been a series of correspondence, comprising both enquiries and information requests, on this subject, which form a subset of wider correspondence with RAIB considered by the organisation to be '*far in excess of that from any other individual or third-party body outside of those industry stakeholders and public bodies directly involved in [their] work*'. We accept that there is compelling evidence that the Appellant's pursuit of his interests will on this basis have created a disproportionate burden to RAIB, which is a small organisation tasked with the important core function of independently investigating accidents to improve railway safety, as well as informing the industry and the public. As part of the latter aim, they routinely publish investigation reports and safety digests.

**The motive:**

31. Second, the motive of the *requester* may well be a relevant and indeed significant factor in assessing whether the request itself is vexatious. The FOIA mantra is generally that the Act is both "motive blind" and "applicant blind". There is, for example, no need to provide any reason for making a request for information under section 1; nor are there any qualifying requirements as regards either the identity or personal characteristics of the requester. However, the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request. What may seem an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority. Thus, vexatiousness may be found where an original and entirely reasonable request leads on to a series of further requests on allied topics, where such subsequent requests become increasingly distant from the requester's starting point.

32. In this context it is important to bear in mind that the right to information under FOIA is a significant but not an overriding right in a modern democratic society. As has already been noted, it is a right that is qualified or circumscribed in various ways. Those restrictions reflect other countervailing public interests, including the importance of an efficient system of public administration. Thus section 14 serves the legitimate public interest in public authorities not being exposed to irresponsible use of FOIA, especially by repeat requesters whose inquiries may represent an undue and disproportionate burden on scarce public resources. In that context it must be relevant to consider the underlying motive for the request. As the FTT observed in *Independent Police Complaints Commission v Information Commissioner* (EA/2011/0222) (at paragraph 19):

*“Abuse of the right to information under s.1 of FOIA is the most dangerous enemy of the continuing exercise of that right for legitimate purposes. It damages FOIA and the vital rights that it enacted in the public perception. In our view, the ICO and the Tribunal should have no hesitation in upholding public authorities which invoke s.14(1) in answer to grossly excessive or ill-intentioned requests and should not feel bound to do so only where a sufficient number of tests on a checklist are satisfied.”*

33. This approach should not be seen as giving licence to public authorities to use section 14 as a means of forestalling genuine attempts to hold them to account. For example, an investigative journalist may make a single request which produces certain information, the contents of which in turn prompts a further request for more information, and so on. Such a series of requests may be reasonable when viewed both individually and in context as a group. The same may also be true of a request made by a private citizen involved in a long-running dispute or exchanges with the PA.

34. However, in other circumstances a series of requests may suggest that later requests have become disproportionate to whatever the original inquiry was. This phenomenon has been described as “*spread*”. The term used by Judge Jacobs is “*vexatiousness by drift*”, indicating that a request is no longer proportionate to its original aim. However, “*drift*” is not a prerequisite to a finding that section 14 applies, as by definition it may only arise where there is a previous course of dealings – a single well-defined and narrow request put in extremely offensive terms, or which is expressly made purely to cause annoyance or disruption to the PA rather than out of a genuine desire for the information so requested, may be vexatious in the complete absence of any such drift.

35. In this case, while the request falls under the auspices of public health and safety, clearly a worthy motivation that is in the public interest, we are of the view that in

fact its nature is at odds with this overarching nature. That is to say, that in focusing on the methodology used by RAIB (or their agents) in producing two safety report in a manner that verges on quibbling, and in asking the PA to undertake calculations again, the request is in fact detracting from the wider work of ensuring public health and safety in terms of diverting resources. The motive of the requester seems to be to force the PA into either accepting or rejecting the requester's views on how an investigation should be conducted. This seems to us to have become a personal motivation albeit one which was originally tied to the serious aim of ensuring public safety.

**The value or serious purpose:**

36. Third, and usually bound up to some degree with the question of the requester's motive, is the inherent value of the request. Does the request have a value or serious purpose in terms of the objective public interest in the information sought? In some cases, the value or serious purpose will be obvious. In other cases, the value or serious purpose may be less obvious from the outset. Of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident.
37. In this case, the request relates to health and safety issues. The requester seeks to challenge the conclusions of reports published by RAIB and the request could speak to the following public interest factors: holding public authorities to account for their performance; understanding their decisions; transparency; and ensuring justice. However, in this context, we agree with the Commissioner that these concerns are superficial and limited to the face value of the request. We find that the wording of the request, viewed on its own as well as in the light of the other submissions we have received, is intended to seek agreement or disagreement with suppositions and beliefs held by the requestor. For example, the wording '*I suspect it is 11 percent g?*' and '*I suspect it is 480 tonnes?*' are suggestive less of a genuine desire to seek recorded information and instead of an attempt to continue a dialogue. This is at odds with the underlying purpose of FOIA and we note that in the Grounds of Appeal, the requester states that he would like the two reports in question to be amended. This is not a viable outcome of FOIA nor one envisaged by the legislation nor which this Tribunal can achieve. We also note that the requestor seems to be asking the PA to carry out new calculations; again, this is not an entitlement under FOIA which is a vehicle for obtaining recorded information.

**Causing harassment of, or distress to, staff:**

38. Fourth, 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 (e.g. the use of racist language). As noted previously, however, causing harassment or distress is not a prerequisite for reaching a conclusion that a request is vexatious within section 14.
39. On examination of the history before us, we consider that it is reasonably likely that the requester's pursuit of his aims will have caused some feelings of harassment or distress to staff. However, this is not a primary reason for our finding that the exemption at section 14(1) FOIA is engaged.

**Conclusion:**

40. In this case the Tribunal note that, during investigations, the Commissioner considered that the Rail Accident Investigation Branch (RAIB) provided sufficient information in its internal review to the Appellant of 2 August 2023, and we find that RAIB's response was evidenced, fair and justifies the decision to rely upon s.14(1) which was, in our view properly made.
41. As the interpretation of a vexatious request has developed over the years the Tribunal and higher courts take a holistic view of all the circumstances in a case to arrive at what admittedly can be a difficult decision. Proportionality is key in this sense and the Tribunal take the view that the Appellant's expectations of RAIB and the use of FOIA in his request on the evidence before us was and remains disproportionate. We accept and adopt the reasoning in the DN and find no error in Law or in the exercise of his discretion by the Commissioner therein.
42. In the circumstances we must dismiss the appeal. However, we should state that section 14(1) FOIA only applies to the request at hand and that any future requests made by the Appellant should be considered on their own merits.

Brian Kennedy KC

Date: 24 April 2024.