

Case No: GIA/1267/2015
GIA/1268/2015
GIA/1269/2015

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**DECISION BY THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

The DECISION of the Upper Tribunal is to dismiss the appeal.

The decision of the First-tier Tribunal (General Regulatory Chamber) dated 15 February 2015 does not involve an error on a point of law. The appeal is therefore dismissed.

This decision is given under section 11 of the Tribunals, Courts and Enforcement Act 2007.

REASONS

Introduction

1. This is the second of two cases which I heard on the same day and which concerned the adequacy of the evidential basis for the First-Tier Tribunal's ["the FTT"] conclusions about the application of section 14(1) of the Freedom of Information Act 2000 ["FOIA"] to requests for information. The first case was *CP v The Information Commissioner* [2016] UKUT 0427 (AAC).
2. Both of these cases revisited the issue of vexatious requests set out in section 14(1) of FOIA in the light of the guidance given by the Court of Appeal in *Dransfield v The Information Commissioner and Devon County Council* [2015] EWCA Civ 454. There were essentially two matters of substance in this appeal: first, 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 second, whether the evidential basis for the FTT's decision was sufficiently clear.
3. In this appeal, I conclude that, first, the FTT correctly approached its task under section 14(1) of FOIA and, second, that the evidential basis for the FTT's decision was sufficiently clear. I have expressed some misgivings

about both the inadequacy of the information relating to the Appellants' dealings with the three public authorities concerned which was contained in the Information Commissioner's Decision Notice ["the IC"]. This affected the FTT's analysis of the history of FOIA requests made prior to 10 December 2013. I find that the high hurdle for satisfaction of the section 14(1) test requires that the course of dealings between the requester and the public authority must be appropriately evidenced and detailed in the IC's Decision Notice ["DN"] and, if the requester then proceeds with an appeal against the DN, in the bundle made available to the FTT. This history need not be compendious or exhaustive but must explain those dealings in sufficient detail and put them into context.

4. The three public authorities concerned, Wolston Parish Council, Brandon and Bretford Parish Council and the Wolston, Brandon and Bretford Joint Burial Committee, chose not to participate in this appeal. I held an oral hearing of this appeal on 8 July 2016 at which the Appellants represented themselves and the Information Commissioner ["the IC"] was represented by Mr Christopher Knight of counsel. I am grateful to the parties for their written and oral arguments which I have found enormously helpful.
5. Following the hearing, the Appellants provided some further documents in support of oral submissions made by them at the hearing. I invited comment from the IC in response which was received on 26 August 2016.
6. I have read the First-Tier Tribunal and the Upper Tribunal bundle carefully (including the material handed to me at the hearing) before coming to my conclusions.

Background

7. What follows is a summary pertinent to this appeal. The requesters and Appellants are a husband and wife – I shall refer to them as the Ys. Their requests for information stemmed from the death of and the burial arrangements for their infant daughter. That is, understandably, a matter of the greatest sensitivity for them and revealing their identities in these Reasons adds nothing to the issues under appeal.
8. The Appellants brought three appeals before the FTT against three separate but closely linked DNs of the IC involving three separate public authorities. There is a connection between the three public authorities because both Parish Councils delegated burial functions to the Joint Burial Committee. Additionally the response from all the public authorities to the complaints made to the IC were handled by the same solicitor. All of the DNs were issued on 10 September 2014.
9. The first public authority was Wolston Parish Council to whom the Ys made sixteen FOIA requests between 10 December 2013 and 24 March 2014 inclusive.

10. The second was Brandon and Bretford Parish Council to whom the Ys made eleven FOIA requests between 20 January 2014 and 4 April 2014 inclusive.
11. The third was Wolston, Brandon and Bretford Joint Burial Committee [“the Joint Burial Committee”] to whom nine FOIA requests were made between 13 and 24 March 2014 inclusive. An additional FOIA request was made on 24 September 2010.
12. The Ys were parents of a baby girl who sadly died within hours of her birth on 3 February 1980. She was interred in Wolston Parish Council’s burial ground after a funeral service in Wolston Parish Church. Many years later the Ys were made aware that, without proper consent, the relevant health authority had retained some of their daughter’s tissues for examination. The Ys wished to have those tissues interred with their child’s remains. However, their plans stalled when it became apparent that the Register of Burials was incorrect. It named Mr Y as the person buried rather than the Ys’ infant daughter.
13. Following correspondence between the Ys and both Wolston Parish Council and the Joint Burial Committee, the Clerk to the Joint Burial Committee, who had made the incorrect entry in the Register of Burials, signed a Statutory Declaration on 17 June 2006 accepting that an error had been made and explaining how this seemed to have happened. I note that, in a letter to the Ys dated 5 August 2011, solicitors on behalf of the Parish Council and the Joint Burial Committee stated that the entry in the Burial Register had been corrected in the light of that Statutory Declaration.
14. The Ys remained unhappy about the rectification of the Register and tried to ascertain whether or not the burial plot in which their child was said to have been buried actually contained her remains. A chronology produced in the FTT bundle [page 421] shows that from February 2006 until March 2007 there was substantial correspondence between the Ys and Wolston Parish Council and the Joint Burial Committee. This also involved the Rector of Wolston Parish Church, the Archdeacon of Coventry and Rugby Borough Council. In September 2010 the Ys once more wrote to Wolston Parish Council and to the Burial Committee seeking information. Their enquiries eventually prompted a written apology from solicitors acting on behalf of Wolston Parish Council and the Joint Burial Committee for the error which had been made in the Burial Register and for the distress this may have caused the Ys [see letter dated 5 August 2011, FTT bundle, page 40].
15. The letter dated 5 August 2011 also stated that the Ys had “*subjected*” Wolston Parish Council and the Joint Burial Committee to “*protracted correspondence which, if it continues, may amount to harassment*” [FTT bundle page 41]. Rather curiously given that it contained an apology to the Ys, that letter informed them that Wolston Parish Council and the

Joint Burial Committee had been advised not to answer any further correspondence from them. Such correspondence would be passed to solicitors.

16. On 10 June 2012 the chronology recorded that the Ys wrote once more to Wolston Parish Council seeking information about, amongst other matters, the identity of the person/s who investigated and dealt with their previous complaints and why a firm of solicitors had been instructed to send them letters [FTT Bundle, page 448]. Solicitors on behalf of Wolston Parish Council replied on 18 June 2012, stating that "*the requests contained in your letter are unreasonable and disproportionate*" and that any further correspondence would be passed to solicitors who would consider if a reply was called for [FTT Bundle, page 449]. The Ys subsequently wrote on 8 July 2012 to all Wolston Parish Councillors and received a reply on 11 July 2012 from the same firm of solicitors. I do not know what that letter said as it was not in the FTT bundle.
17. The FOIA requests made of Wolston Parish Council were received between 10 December 2013 and 24 March 2014. They concerned burial procedures, the authority's structures, legal arrangements and statutory functions. I note that four requests were sent in a period of five days from 12 to 15 January 2014 inclusive and a further three requests were sent on three consecutive days from 18 to 20 March 2014 inclusive. Wolston Parish Council initially responded to the requests by saying either that it held no information or that section 14(1) applied to the requests as they were vexatious. However, on 21 May 2014 Wolston Parish Council wrote to the Ys to say that it had been contacted by the IC in response to the Ys' complaints about the way their requests were being handled and it confirmed that it considered all the FOIA requests to be vexatious.
18. The FOIA requests made of Brandon and Bretford Parish Council were made between 20 January 2014 and 4 April 2014 inclusive. They too concerned the Parish Council's structures, legal arrangements and statutory responsibilities. Four requests were sent in a six day period from 18 to 24 March 2014 inclusive. The Parish Council responded to the first two requests but did not immediately respond to the other nine. The Ys once more complained to the IC on 14 March 2014 about the manner in which their requests were being handled. On 20 May 2014 Brandon and Bretford Parish Council wrote to the Ys to state that it considered all 11 FOIA requests to be vexatious.
19. Finally, the FOIA requests made of the Joint Burial Committee comprised one made in September 2010 and nine further requests made over an eleven day period from 13 to 24 March 2014 inclusive. The requests again sought information about the authority's structures, legal arrangements, statutory functions and its expenses together with those of its clerk. The 2010 request was answered on 4 March 2014, following the intervention of the IC, by sending the Ys a copy of the 2006 Statutory Declaration together with a copy of the Joint Burial Committee's Resolution authorising the amendment of the Register of Burials. All

other nine requests were deemed by the Joint Burial Committee to be vexatious.

20. The IC determined that the 2010 request had been answered by the Joint Burial Committee providing all the information held and rejected the application of section 14 to this request on the basis of its age and the length of time the public authority took to respond.
21. The IC accepted that it was unusual for the three public authorities involved to apply section 14(1) of FOIA to all the other requests. He was nevertheless mindful of the history of correspondence since 2006. However, having examined the volume of requests, their context and the resources available to the public authorities, the IC concluded that the public authorities had properly applied section 14(1). The Ys appealed to the FTT.

The Tribunal Decision

22. The FTT considered the appeal on the papers alone as had been agreed by the Ys and the IC. On 15 February 2015 it dismissed the appeal, agreeing with the IC that the requested information lawfully fell within the scope of section 14(1) of FOIA.
24. Having set out the history of dealings between the Ys and the three public authorities in paragraphs 1-17 of its Reasons, the tribunal noted the Ys' concerns about the process for correcting errors in respect of an issue as sensitive and personal as a burial certificate that had been mis-issued but then corrected [paragraph 24, Reasons]. However, those concerns did not permit the Ys to launch a series of requests aimed at the three public authorities without objective consideration of the volume of those requests, how the requests would be handled and the impact those requests would have on the authorities [paragraph 25, Reasons].
25. The FTT made findings of fact on the evidence before it as to the burden on the three authorities. The clerk to Wolston Parish Council was regularly spending half her employed time dealing with the Ys and felt harassed and stressed. The request had thus imposed a significant burden on Wolston Parish Council. The clerk to Brandon and Bretford Parish Council worked three hours a week and could not deal with the Ys' correspondence and her other duties during work hours, leaving her feeling worried and intimidated. Finally the clerk to the Joint Burial Committee who worked four hours a week felt subject to psychological warfare [paragraphs 32-34; 37; 39-40, Reasons].
26. The FTT held that the requests crossed the threshold of what was reasonable. The Ys' pursuit of a personal agenda overshadowed any intrinsic value or serious purpose the requests might have had. There was only a limited public interest in the information sought even though it mattered to the Ys personally [paragraph 35, Reasons]. The FTT

attached significance to the correction of the inaccurate burial record in 2006 and the warning given to the Ys in 2011 and 2012 that their continued correspondence constituted harassment [paragraphs 24; 26 and 35].

27. In reaching its decision, the FTT directed itself in some detail to the decision of the Upper Tribunal in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). I note that the judgment of the Court of Appeal in *Dransfield* was not available to the tribunal at the time it made its decision.

The Appeal to the Upper Tribunal

28. The First-tier Tribunal refused permission to appeal on 27 February 2015. On 28 May 2015 I listed the application for permission to appeal for a hearing before me, drawing the attention of the Ys to the decision of the Court of Appeal in the *Dransfield* case. I held an oral hearing in London on 30 September 2015 at which the Ys appeared in person. In accordance with my direction, there was no requirement for the IC to attend or make submissions and he did not do so. On 5 October 2015 I granted permission to appeal on the three grounds which follow.
29. First, the tribunal's conclusion that the requests were vexatious within the meaning of section 14(1) of FOIA was arguably in error of law in the light of Arden LJ's observation 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*" [paragraph 68, *Dransfield* in the Court of Appeal]. It was arguable that the tribunal erred in law in its decision by failing to give sufficient weight to the nature of the requests made and to the high threshold necessary to cross section 14(1). The tribunal's conclusion that there was only a limited public interest in the matters being pursued by the Ys appeared inadequately reasoned in the light of Arden LJ's observations and its own view about the value to the Ys of the information sought. I posed the question as to whether the tribunal should have considered adjourning to hear from the Ys directly in order to better gauge any public interest engaged by these requests.
30. Second, in the light of the high hurdle for satisfaction of the test in section 14(1), a rounded assessment required scrutiny of the history of dealings between the requester and the public authority based on an appropriately detailed evidential footing. In this case, the tribunal relied on the fact that correspondence from the Ys with the authorities had begun in 2006 and that it had prompted two letters in 2011 and 2012 to the Ys on behalf of the authorities warning them that their conduct bordered on harassment. I questioned (a) whether reliance on those facts was sufficient as a context for the treatment of the 2013/2014 FOIA requests or (b) whether there should arguably have been a more detailed scrutiny of the history of correspondence. I made that

observation in the light of the following matters: (a) the correspondence in 2006/2007 might well be thought entirely justified given that it resulted in the making of the Statutory Declaration and the aftermath to that event; (b) there was no correspondence from the Ys to Wolston PC from March 2007 to September 2010 [see chronology at pages 421-422]; (c) there was no chronology in the bundle as to correspondence between the Ys and the two other public bodies either at all or from March 2007 to September 2010; (d) the correspondence from the Ys in 2010 and 2011 resulted in the formal apology by all three public bodies on 5 August 2011 yet this was accompanied by a warning that further correspondence from the Appellants might amount to harassment [FTT bundle pages 139-140]; and (e) one request in June 2012 was met with a solicitor's letter repeating the warning about harassment [FFT bundle pages 448-449].

31. Third, the letter from the Ys dated 1 October 2015 enclosed a letter from the Information Commissioner's office dated 20 July 2010 which stated that "*the Information Commissioner does not oversee legislation regarding public burial records and registers and therefore we are not able to advise on this matter*". This letter was in response to an enquiry by the Ys about public burial records and registers held by public authorities especially in regard to the changing and amending of such records. The Ys submitted that, in consequence, neither the Information Commissioner nor the tribunal had jurisdiction to investigate the requests for information and rule these as vexatious with the meaning of section 14(1). I was not especially persuaded that this ground was arguable as the requests made by the Ys concerned burial procedures, and the authorities' structures, legal arrangements and statutory functions rather than the contents of the public burial records and registers themselves. I noted that neither the Information Commissioner nor the tribunal considered this issue, possibly because it was not raised by the Ys in their grounds of appeal to the tribunal. Nevertheless, despite my reservations, I granted permission to appeal on this ground.

FOIA: Section 14(1)

32. The following summary of legislation and case law is identical to that contained in *CP v The Information Commissioner*.
33. The right to request information under section 1 of FOIA is subject to section 14. Section 14(1) provides that "*Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious*". There is no statutory definition of what constitutes a vexatious request within FOIA.

(i) The Upper Tribunal in Dransfield

34. In the Upper Tribunal decision of *Dransfield* [see reference in paragraph 14 above], the Upper Tribunal gave some general guidance

on the issue of vexatious requests. It held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA [paragraph 10]. That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if “*the high standard set by vexatiousness is satisfied*” [see paragraph 72 of the *Dransfield* judgment in the Court of Appeal].

35. The test under section 14 is whether the request is vexatious not whether the requester is vexatious [paragraph 19]. The term “*vexatious*” in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA [paragraph 24]. As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account [paragraph 25]. The IC’s guidance that the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request [paragraph 26].
36. Four broad issues or themes were identified by Upper Tribunal Judge Wikeley as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations were not exhaustive and were not intended to create a formulaic check-list [paragraph 28]. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal’s decision.
37. As to burden which is of relevance in this appeal, 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 the request is properly to be described as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor [paragraph 29]. Thus, 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. However if the public authority has failed to deal with those earlier requests appropriately, that may well militate against holding the most recent request to be vexatious [paragraph 30]. Equally a single well-focussed request for information is, all things being equal, less likely to run the risk of being found to be vexatious.

Wide-ranging requests may be better dealt with by the public authority providing guidance and advice on how to narrow the request to a more manageable scope, failing which the costs limit under section 12 might be invoked [paragraph 31].

38. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [paragraph 32]. The Upper Tribunal considered the extensive course of dealings between Mr Dransfield and Devon County Council which, in the relevant period, comprised some 40 letters and several FOIA requests when coming to the conclusion that his request was vexatious [see paragraphs 67-70].
39. Ultimately the question was whether a request was a manifestly unjustified, inappropriate or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests [paragraphs 43 and 45].

(ii) *The Court of Appeal in Dransfield*

40. There was no challenge to the guidance given by the Upper Tribunal in the Court of Appeal. In the Court of Appeal, the only issue relevant to this appeal was the relevance of past requests. Arden LJ rejected the submission that past requests were relevant only if they tainted or infected the request which was said to be vexatious. She held that a rounded approach was required which did not leave out of account evidence which was capable of throwing light on whether the request was vexatious. In the *Dransfield* case the FTT had erred by leaving out of account the evidence in relation to prior requests that had led to abuse and unsubstantiated allegations directed at the local authority's staff. That evidence was clearly capable of throwing light on whether the request directed to the same matter was not an inquiry into health and safety but a campaign conducted to gain personal satisfaction out of the burdens it imposed on the authority [paragraph 69, judgment].
41. Arden LJ gave some additional guidance in paragraph 68:
"In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and 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 any section of the public. 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. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...

Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.

The Arguments of the Parties

42. I do no more than summarise these though I have considered both parties' detailed submissions with care. The IC submitted that I should dismiss this appeal. The decision of the FTT was consistent with *Dransfield* in both the Court of Appeal and the Upper Tribunal. As to ground two, she submitted that the Upper Tribunal's concern about the extent to which the tribunal sufficiently examined the course of dealings between the Ys and the three public authorities was misplaced. Significance was only attached to the harassment warnings given in 2011 and 2012. The making of 36 requests to three small public authorities within a four month period was archetypal vexatious behaviour indicative of a campaign against those authorities.
43. The Ys' submissions did not engage with the grounds on which I gave permission to appeal. They made allegations about the behaviour of the IC, namely that she had lied, acted in bad faith and been blinkered, biased and unkind [Upper Tribunal bundle, pages 150; 153; and 144]. They described the FTT as also acting in bad faith [Upper Tribunal bundle, page 144] and all three public authorities were accused of having supplied false, deceitful, fabricated information [Upper Tribunal bundle, pages 137; 153]. Their submissions aimed to persuade me that there was a wide-ranging conspiracy on the part of the three public authorities to cover up their allegedly unlawful actions in connection with the burial of the Ys' infant daughter and the subsequent rectification of the Burial Register.

Ground 2: The Evidential Basis

44. I address this ground first as it is logical to do so in the circumstances of this appeal.

45. This ground of appeal engaged with the tribunal's scrutiny of the course of dealings between the public authorities and the Ys, this being one of the factors relevant to an evaluation of the burden engaged by these Requests. Both Upper Tribunal and Court of Appeal case law requires a rounded assessment of whether a request satisfies the high hurdle of vexatiousness in section 14(1). In *CP v The Information Commissioner* I held that, in cases where past dealings were of relevance, an appropriately detailed evidential foundation addressing the course of dealings between the requester and the public authority was a necessary part of that assessment. A compendious and exhaustive chronology exhibiting numerous items of correspondence was not required but there must be some evidence, particularly from the IC, about the past course of dealings between the requester and the public authority which also explained and contextualised them.
46. In this case there was no such chronology of dealings between the Ys and any of the public authorities in the IC's separate DNs. The DNs made reference to: (a) the sensitive background of the Ys requests; (b) the Statutory Declaration in 2006; (c) the Ys' unwillingness to accept the same; and (d) their continuing efforts to ascertain whether the burial plot actually contained the remains of their child [see, for example, the DN with respect to Wolston Parish Council at paragraph 3, FTT Bundle pages 1-2]. In paragraph 9 of the Wolston Parish Council DN, the IC stated:
"In considering the scope of this complaint the Commissioner accepts that it is unusual for a public authority to apply section 14 to every request received including initial requests. However, he also accepts that within the FOIA framework and outside of the FOIA, the public authorities concerned have been involved in protracted correspondence with the complainants since 2006 and, in the case of Wolston Parish Council, had taken the step, in 2011, of advising the complainants that their continued correspondence bordered on harassment which would mean they would receive no further replies to any correspondence. A further letter was deemed necessary in 2012 to reiterate this position." [FTT bundle, page 3]
47. The DN in respect of Wolston Parish Council went on to state that the *"background and context is extremely relevant to the public authority's handlings of the complainants' requests"* [paragraph 10, FTT Bundle page 3]. Though not stated so clearly, it is apparent that the same factors applied to the IC's consideration of the requests made to Brandon and Bretford Parish Council and to the Joint Burial Committee. In the Wolston Parish Council DN reference is made to *"other extensive correspondence"* in paragraph 18 and the contents of the two solicitors' letters in 2011 and 2012 are mentioned in paragraphs 22 and 23 [FTT bundles, pages 5-6].
48. Despite the IC's assertion that background and context was extremely relevant, the information provided in his DN merely scratched the

surface. It certainly provided no adequate basis for an understanding of the dealings between the Ys and the three public authorities. For example, the information given about the solicitors' letter in 2011 failed to mention that it also contained an apology to the Ys for the error in the Burial Register and for any distress they might have experienced in consequence. Further, though the correspondence was described as extensive/protracted, reference to that factor alone was insufficient. As I said in *CP v The Information Commissioner*, proper scrutiny of the number of previous FOIA requests requires more than a superficial count [paragraph 40]. The same applies when scrutinising a course of dealings outside the FOIA regime as in this case. Reading the IC's DN in the case of Wolston Parish Council, one might be forgiven for thinking that the correspondence was not only extensive but also continuous since 2006 though this does not appear to have been the case. What was required from the IC in this sensitive case was a more nuanced analysis of the course of dealings between the Ys and the three public authorities.

49. In my grant of permission I made reference to a chronology which seems to have been prepared in respect of a Subject Access Request under the Data Protection Act 1998 made by the Ys to Wolston Parish Council at some point after 11 July 2012 (the last entry in the chronology) [FTT Bundle, pages 421-423]. Scrutiny of that useful document alongside the other material in the FTT Bundle prompts me to make the following observations. I make no findings of fact for that, in the context of this appeal, was the province of the FTT. However, these observations illustrate that the past course of dealings between the Ys and the public authorities was rather more complex than the brief information contained in the IC's DNs.
50. The Ys' dealings with Wolston Parish Council began in February 2006 and appear to have been prompted by their application for a licence from the Department of Constitutional Affairs for the exhumation of their daughter's remains [FTT Bundle, pages 123-131]. During the enquiries made as part of that application, it transpired that the Burial Register was incorrect and this prompted the making of the Statutory Declaration on 17 June 2006. The Ys were informed of the Statutory Declaration in a letter dated 13 July 2006 [FTT bundle 34-35]. No apology to the Ys for the mistake in the Burial Register and any consequential distress was made in that letter or in the Resolution (also enclosed in the letter) passed on 12 July 2006 by the Joint Burial Committee [Upper Tribunal bundle, page 60]. Given the remedial action which had to be taken by the Joint Burial Committee, the Ys' correspondence during 2006 and early 2007 might be thought entirely justified. I note that, during this period of dealings, the Ys' last letter to Wolston Parish Council was on 25 January 2007.
51. Further, there appears to have been no correspondence between the Ys and Wolston Parish Council from 25 January 2007 until 24 September 2010, a period of some three years and nine months. I do

not know if, during that period, the Ys were in correspondence with the two other public authorities as there is simply no chronology about their past course of dealings with those public authorities. When it resumed, the correspondence in 2010-2011 eventually resulted in an apology to the Ys on 5 August 2011, an apology which might be thought to have been long overdue. I have already noted that the apology was contained in the letter which warned the Ys that their correspondence might amount to harassment. One request by the Ys in June 2012 was met with a solicitor's letter repeating the warning about harassment. I note that the FTT had no other information available to it about communication between the Ys and any of the public authorities after July 2012 though the correspondence produced to me after the hearing suggested there may have been some.

52. All of the above information – with the exception of the Resolution referred to in paragraph 50 above – was available to the FTT. I find that nowhere in its Reasons was there an adequate scrutiny of the past course of dealings prior to late 2013 by reference to this material. The FTT appears to have relied on the superficial analysis in the IC's DNs when it had available to it information which might have prompted it to make a rather more nuanced assessment of the Ys' past dealings with the three public authorities.
53. Despite my misgivings about the deficiencies in the IC's DNs and the tribunal's less than satisfactory analysis of the past dealings between the Ys and the three public authorities, I have come to the conclusion that these deficiencies do not constitute a material error of law affecting the tribunal's conclusions. The FTT had to survey the **entire** course of dealings between the Ys and the three public authorities when coming to a conclusion about the burden which the 2013/2014 FOIA requests imposed on these public authorities. Its conclusions on that issue as a whole were well-founded.
54. The evidence from the staff employed by the public authorities demonstrated that dealing with the Ys' FOIA requests detracted from other work. The staff felt personally stressed by the volume of requests and by the manner in which some of them were made. The FTT noted that the IC had seen correspondence from the Ys describing both the clerk to the Joint Burial Committee and the Committee itself as "*inappropriate, unethical, disrespectful and dishonest*" [paragraph 40, Reasons]. In circumstances where there was only a limited public interest in the matters being pursued, the FTT concluded that the Ys' behaviour in continuing with requests for information appeared to be for no other reason than to satisfy a personal agenda against the three public authorities and that was not a legitimate use of FOIA [paragraphs 36, 38 and 41, Reasons]. Those conclusions were ones which were well-founded on the evidence of the Ys' most recent dealings and were conclusions which are not susceptible to challenge on appeal.

55. I accept the submission of the IC that the making of 36 requests within a four month period was archetypal vexatious behaviour. It was unfortunately indicative of a campaign rather than a series of requests with a serious purpose or value. The burden on the authorities coupled with the lack of public interest in the requests was ample justification for invoking section 14(1).
56. In conclusion, I find that the tribunal did not materially err in law by giving inadequately founded reasons for its decision and I dismiss this ground of appeal.

Ground 1: Consistency with the Court of Appeal

57. These grounds engaged consideration of whether the tribunal had conducted the rounded assessment required by the Court of Appeal. I considered it arguable that the FTT may have given insufficient weight to the nature of the requests made by the Ys when conducting that assessment.
58. The Court of Appeal stressed that an objective approach must be used when assessing if a request is vexatious. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. I held in *CP v The Information Commissioner* that the Court of Appeal clarified that the public interest in the information which is the subject of the request cannot act as a trump card so as to tip the balance against a finding of vexatiousness.
59. In summary, the Ys' trenchantly expressed submissions sought to persuade me in broad terms that the conduct of the three public authorities was so reprehensible – supplying “*false, deceitful, fabricated information*” [Upper Tribunal bundle, pages 137 and 153]; having stolen coroner's records [Upper Tribunal bundle, page 144] and having generally acted in bad faith [Upper Tribunal bundle, pages 142,145 and 150] – that the FTT's assessment of the public interest was seriously flawed.
60. The IC submitted that the FTT correctly applied an objective analysis when considering the value of the request/s to the Ys. The Reasons clearly indicated why the FTT considered that any limited value or public interest in the Request was nevertheless outweighed by the other circumstances of this case.
61. It is clear to me from reading and hearing the Ys' submissions that the tragic death of their daughter remains a matter about which they continue to experience strong emotions. Though I have considerable sympathy for them, I make it clear that it is no part of my task to make detailed findings about the conduct of the public authorities, let alone findings in the terms that the Ys sought. The allegations raised by the Ys were also not matters about which the FTT could properly make findings.

62. Read as a whole, I find that the tribunal's Reasons clearly indicated why it considered that any limited value or public interest in the requests was nonetheless outweighed in all the circumstances of this case. Leaving aside consideration of the earlier course of dealings, the Ys were making requests of a persistent and repetitive nature during late 2013 and into 2014. Their behaviour had become an obsessive pursuit which placed an enormous burden on small public authorities with very limited staff resources.
63. The use of section 14 requires a high threshold. The tribunal directed itself explicitly to the Upper Tribunal's decision in *Dransfield* and, though it may not have expressly made mention of that high threshold, its reasoning was consistent with the principle that section 14 should not be invoked without objective and careful justification.
64. I accept the IC's submissions the FTT did not err in law by not adjourning and seeking oral representations on the issue of the public interest in this case. Both parties had consented to the paper process and it was consistent with the overall objective that neither should be put to the cost of attending an unwanted hearing. The parties' respective cases were well set out in the bundle.
65. For all these reasons I have concluded that this ground is not made out and should be dismissed.

Ground Three: Jurisdiction

66. The third ground of appeal advanced by the Ys was that neither the IC nor the FTT had jurisdiction to investigate their requests for information and to rule that these were vexatious. This was because the requests concerned public burial records and registers and this had been confirmed to them by a letter from the IC on 20 July 2010. I granted permission despite not being entirely convinced that there was substance in this ground.
67. As the IC points out, if FOIA did not cover the Ys' concerns about burial records, then it would be correct that section 14(1) could not apply. However, the Ys would thus have had no right to seek information under section 1 of FOIA. The IC and the FTT correctly, in my opinion, took the view that the Ys' requests were requests for information within the scope of section 1 of FOIA because they were made to public authorities designated within Schedule 1 of FOIA (paragraph 7 covering parish councils and paragraph 25 the Joint Burial Committee).
68. The letter sent by the IC to the Ys on 20 July 2010 did not alter that position even though the Ys thought it did. It correctly told them that the IC could not advise them about public burial records and that FOIA did not itself address what records a public authority should hold or how such information was amended or charged for [Upper Tribunal bundle,

pages 119-120]. There was nothing in this letter which was, I find, inconsistent with the IC's substantive role in relation to FOIA requests for information.

69. It thus follows that I dismiss this ground of appeal.

Post-Hearing Submissions: Correspondence from the IC

70. At the hearing on 8 July 2016 the Ys asserted that they had been advised by the IC in a letter or letters in 2014 to make separate requests for information to the public authorities concerned. At the hearing they were unable to produce any correspondence to that effect. Mr Knight on behalf of the IC was also unable to shed any light on that issue. On 18 July 2016 and 20 July 2016 I received letters from the Ys to which was attached the correspondence from the IC on which they relied. I gave the IC some time to respond to that material.
71. The Ys provided 6 letters from the IC, two of which dated 19 June 2014 and 21 July 2014 were wholly irrelevant to the issues in this appeal as they were sent after the Ys had made all the relevant FOIA requests. The advice contained in those letters could have had no bearing on the Ys' behaviour. The Ys also provided a further five letters from the IC – 10 August 2011, 15 October 2012, 18 June 2013, 20 August 2013 and 21 February 2014 – all of which were irrelevant to their assertion that the IC encouraged them to make FOIA requests to the three public authorities. I explain the content of these letters in paragraph 72 below.
72. The letter of 10 August 2011 was a standard form letter accompanying a leaflet about the IC's work which had been requested by the Ys. The letter dated 15 October 2012 was an attempt to clarify precisely what the Ys wished to complain about and told them that, if they wished to complain about an organisation under the Data Protection Act 1998, they would have to formalise their complaint with that organisation in writing before the IC could investigate. The letter dated 18 June 2013 was sent in response to a complaint from the Ys about Wolston Parish Council and informed the Ys that their complaint had been allocated to one of the IC's complaint handling teams. The letter noted that some of the information the Ys had requested from Wolston Parish Council might be personal data relating to them as individuals and the IC would need to clarify whether FOIA or the Data Protection Act 1998 applied. The letter dated 20 August 2013 informed the Ys that the IC was unable to give them any information about the statutory duties, functions and responsibilities of local authorities save in respect of the IC's responsibilities under FOIA or the Data Protection Act 1998. Finally, the letter dated 21 February 2014 sought to clarify whether the Ys had raised with Wolston Parish Council their claim that inaccurate personal information about them was being processed by that authority. This letter concerned the Ys' request for personal data under the Data Protection Act 1998 and is thus not relevant to FOIA requests.

73. I consider the remaining four letters in date order.
74. The letter dated 13 May 2013 from the IC was in response to correspondence from the Ys in which they had complained about Wolston Parish Council's response to a request for information. Some of the information they submitted to the IC also concerned a separate request for information from the Joint Burial Committee made in May 2012. The IC's letter wrongly informed the Ys that the Joint Burial Committee was not a public authority as defined by FOIA and thus the IC was unable to assist them with their complaint. The Ys were asked to submit further information by 17 December 2013 as the IC had been unable to find, in the documents sent by the Ys, a copy of the request for information made to Wolston Parish Council.
75. I find that this letter did not support the Ys' submission that the IC had invited them to make requests for information. The IC's error with respect to the status of the Joint Burial Committee was corrected in a letter to the Ys dated 13 February 2014 [Upper Tribunal bundle, page 328] and I note that the Ys made no FOIA requests to the Joint Burial Committee until 13 March 2014.
76. The letter dated 5 November 2013 was in response to the Ys' complaint about a request for information they had made to Wolston Parish Council on 10 June 2012. Because of the delay in bringing their complaint to the attention of the IC, the IC was unable to investigate. The letter concluded by saying: "*However, should you wish to submit a new FOIA request to the Council for copies of the information that you require, we will be able to consider this matter*". This letter did suggest that the Ys might wish to make a singular FOIA request to Wolston Parish Council. I find that it does not provide support or justification for their subsequent behaviour in making 16 FOIA requests of that authority in a four month period and thus has no material bearing on the issues in this appeal.
77. The letter dated 13 February 2014 informed the Ys of the IC's preliminary view about their request for information made to Wolston Parish Council in September 2012. There was no invitation in that letter to the Ys to make further FOIA requests to Wolston Parish Council.
78. Finally, the letter dated 31 March 2014 informed the Ys that Brandon and Bretford Parish Council could not respond to part of a request for information about records held by the Joint Burial Committee unless it was permitted to do so. The IC stated that the most pragmatic way forward was for the Ys to make a request for information directly to the Joint Burial Committee. The advice in that letter in fact post-dated all the requests made by the Ys to the Joint Burial Committee and thus was irrelevant to their case that the IC encouraged them to make the FOIA requests they did.
79. I find that none of this correspondence suggested that the IC had advised the Ys to submit numerous separate requests to each authority

within a short period of time. The advice given – save for the error about the status of the Joint Burial Committee – was appropriate and the IC cannot be held responsible for the manner in which the Ys pursued their subsequent FOIA requests. In coming to that view, I bear in mind that the IC will only usually accept a FOIA or data protection complaint for investigation if the focus of the complaint can be ascertained and the complainant can provide evidence of raising the complaint with the public authority concerned. I was told by the IC that her routine advice is that FOIA requests should be submitted to the public authority that is likely to hold the information sought and, if the requester does not receive a response from the public authority, they must first ask for an internal review before lodging a complaint with the IC [Upper Tribunal bundle, page 347]. That advice is plainly correct and appropriate since it may often resolve the matter and, if not, the process of internal review may assist the IC in understanding the issues if a complaint is pursued to her office. The advice given to the Ys was consistent with the IC's approach to complaint casework. It is unfortunate that they appear to have misconstrued that advice but none of the correspondence provides any support whatsoever for the volume of FOIA requests made by them to the three public authorities over a relatively short time frame.

Conclusion

80. For all the reasons set out above, I find that the decision of the tribunal dated 15 February 2015 was not in error of law and I dismiss this appeal.

Gwynneth Knowles QC
Judge of the Upper Tribunal
26 October 2016.

[signed on original as dated]