Neutral Citation Number: [2026] UKUT 123 (AAC)
Appeal No. UA-2025-000374-GIA

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Keith Kennaugh

Appellant

- v -

The Information Commissioner

Respondent

Before:	**Upper Tribunal Judge Markus KC (sitting in retirement)**
Hearing date:	**11th March 2026**
Mode of hearing:	**Cloud Video Platform**

Representation:

Appellant:	**In person**
Respondent:	**Mr Leo Davidson (counsel)**

On appeal from:

Tribunal:	First-tier Tribunal (General Regulatory Chamber)
Judge/Panel:	Upper Tribunal Judge Rintoul (sitting as a Judge of the First-tier Tribunal), Tribunal Members D Palmer–Dunk and E Yates.
Tribunal Case No:	EA/2023/0275
Tribunal Venue:	In Chambers
Decision Date:	15th March 2024

SUMMARY OF DECISION

The public authority had not responded to a request for information, relying on section 17(6) of the Freedom of Information Act 2000 because it claimed that the request was vexatious.

The Upper Tribunal reviews the case law as to the character of section 17 that makes it clear that section 17 is a procedural provision. However, section 17(6) did not dispense with the authority's obligations under section 1 unless the request was vexatious and so the Information Commissioner and, on appeal, the First-tier Tribunal was required to address that substantive question.

In the present case the First-tier Tribunal had not erred in law in deciding that the request was vexatious and that the authority had been entitled to rely on section 17(6).

KEYWORDS

93.2 Freedom of information – public authority response

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is that the appeal is dismissed. The decision of the First-tier Tribunal dated 15th March 2024 under case number EA/2023/0275 did not involve the making of any error of law.

REASONS FOR DECISION

Factual and procedural background

1. This appeal arises against a background of concerns having been raised by Mr Kennaugh about the conduct of prominent people during the covid pandemic. He was unhappy with the handling of these matters by West Yorkshire Police (WYP) and complained to the Policing and Crime Casework Team within West Yorkshire Combined Authority (WYCA), which acts on behalf of the Mayor.

2. There has been significant correspondent between WYCA and Mr Kennaugh regarding these and associated matters.

3. On 9th November 2021 WYC notified Mr Kennaugh that it was implementing its unreasonable behaviour policy to restrict his contact with WYCA due to his refusal to accept that issues were not within their remit despite having been provided with information about what they could and could not assist with, sending multiple communications, frequently repeating questions that had already been answered and making inflammatory comments about members of staff. He was told that these restrictions did not revoke his rights under FOIA and UK General Data Protection Regulations (GDPR). WYCA considered that Mr Kennaugh then used FOIA and GDPR to circumvent the unreasonable behaviour policy.

4. Mr Kennaugh made a number of requests to WYCA for information under FOIA which were refused as vexatious in reliance on section 14 of that Act. In response to requests made in February and March 2022, WYCA not only informed Mr Kennaugh that it was no obliged to provide the information because the requests were vexatious but also told him that (in accordance with section 17(6) of FOIA) any subsequent requests similar in theme, tone or context would not be responded to.

5. On 4th May 2022 Mr Kennaugh made the following information request to WYCA:

> "We have established that the policing and crime office has removed the right of appeal from their "Unreasonable behaviour" policy contrary to Article Six of the European Convention of Human Rights, and have done so without seeking appropriate legal advice, and we have established that they are intercepting these emails with no legal authority and that they know they have no legal authority.

> They appear to do this on the basis that they think it unreasonable to expect that where the police have agreed to a course of conduct in response to a complaint and do not follow that course, that the policing and crime office should at least record that fact and seek an explanation.
>
> The question here is: is they [sic] mayor aware of the lawbreaking by her policing and crime office, and if so, then what reason was she told to justify it?"

6. Mr Kennaugh submitted a further request on 17th May 2022:

> "I am writing to ask what are your policing objectives with regards to the criminal misconduct in the high offices of state, as I believe that this crime represents by far the biggest threat to the people of West Yorkshire.
>
> Despite a number of letters on the subject during your consultation period, I can find no mention of misconduct anywhere in your Crime Plan.
>
> I trust that you are aware of the offence, but for the benefit of the readers, the CPS guidelines are available here: https://www.cps.gov.uk/legal-guidance/mi...
>
> From the wilful seeding of care homes with a deadly virus, to the treaty formally known as "Oven Ready", and now called the Northern Ireland Protocol, this government is established and defined by the abuse of the public's trust. The lies about partygate, the open market in peerages and the torrent of public money into the pockets of donors: the list goes on and on.
>
> Much of the United Kingdom's constitution is founded on "The Good Chap" principle and the Good Chap principle relies on the public's trust. If that trust is abused then it threatens the very fabric of our society: this is why such abuse is a criminal offence.
>
> We are governed by criminals and crime is a matter for the police. What are this areas objectives in relation to this crime?"

7. WYCA did not respond to either request.

8. On 13th June 2022 Mr Kennaugh complained to the IC that he had not received a response to the request of 4th May. On 5th July WYCA notified the IC that it relied on section 17(6) of FOIA. They included within the response a copy of a letter dated 6th April 2022, dealing with a different request for information, in which they considered the request to be vexatious under section 14(2) of FOIA and notified him that in accordance with section 17(6) they were not obliged to respond to requests which they believed to be vexatious under section 14(1) and they had previously replied to similar requests.

<u>The Information Commissioner's decision notice</u>

9. The IC's decision notice was issued on 2nd May 2023. It referred to the two requests of 4th and 17th May 2022 but, under a heading "Scope of the case", explained that Mr Kennaugh's contact with the IC had been in regard to the request of 4th May and that was the request covered by the Decision Notice. The decision notice set out WYCA's position explaining why it considered that the request was vexatious and why they had not responded pursuant to section 17(6).

10. The IC referred to the detailed reasons in two previous Decision Notices relating to requests of 27th February and 9th March 2022 which upheld WYCA's application of section 14 to each. These decision notices were included in the FtT bundle. The

reasons in those notices included a recital of the following matters relied on by WYCA:

> "21. WYCA stated in its response to the complainant dated 28 March 2022 that it 'has noted the number of requests that you have submitted under the FOIA – albeit from alternative email addresses, yet all the same or similar nature. Several attempts have been made to advise, under Section 16 of the FOIA, alternative methods to communicate with the Combined Authority yet the pursuit of submitting such questions under the FOIA is both disproportionate and not in the public interest."
>
> 22. WYCA pointed out to the Commissioner that it had explained to the complainant on a number of occasions that the FOIA was only for information held in a clearly reportable format and was not intended for general correspondence, complaints or used as a means to change the policy or legislation, which a lot of his requests were seeking to achieve.
>
> 23. WYCA advised the Commissioner that on 9 November 2021 it implemented its unreasonable behaviour policy to restrict and limit the complainant's contact with it for the following reasons:
>
> - "Refusing to accept that issues are not within the remit of the Mayor, the Deputy Mayor for Policing and Crime or the staff in the Policing and Crime Team despite having been provided with information about what we can and cannot assist with;
> - Sending multiple forms of communications to the wider Combined Authority A in an attempt to change the outcome of his communications with the Policing and Crime Team;
> - Sending numerous emails/letters, often within short periods of time, frequently repeating questions that had already been answered. In particular, continuing to involve the Information Governance team in his complaints about Members of Parliament and the BBC despite being told on a number of occasions how these crime reports are submitted in these circumstances and who is responsible for considering them.
> - Make comments about staff members ability to perform their role with the intention to be inflammatory."
>
> 24. WYCA confirmed that, the implementation of the policy did not revoke the complainant's rights under FOIA or the UK General Data Protection Regulations. However, it considers that the complainant then turned to FOIA and the GDPR to make requests as a means to continue to correspond with it and to circumvent the unreasonable behaviour policy decision. It stated 'It was simply due to the fact that restrictions had been placed on the Requestor, with the imposition of the unreasonable behaviour policy, that he looked to access the Combined Authority through requests under the FOIA.'
>
> …
>
> 27. WYCA has also provided the Commissioner with a timeline of the complainant's engagement with it. This includes complaints, FOI requests, subject access requests and general correspondence. It is clear that all communications from the requester are on the broad topics outlined at paragraph 23 above. The timeline also evidences that the application of the unreasonable

behaviour restrictions has not diminished the requester's contact with WYCA, but rather has resulted in an increase in using FOIA to continue to revisit matters which have either been resolved or to raise complaints and concerns about the way WYCA is handling his correspondence."

11. The IC concluded:

"28. The Commissioner has considered the context and history in which the present request has been made, along with the subject matter of the respective requests, and determines that it is vexatious for the same reasons as those set out in his Decision Notices IC-168381-Q2J4 and IC 213303-S5B4 dated 20 and 24 April 2023 respectively. He also notes that in its response to the complainant's requests referenced in those decision notices, WYCA put him on notice that similar future requests would not be responded to by virtue of Section 17(6) of FOIA. Therefore, in all the circumstances, the Commissioner finds it would be unreasonable for WYCA to issue a further refusal notice under Section 17(5) of FOIA. 29.

29. The Commissioner is satisfied WYCA authority has successfully applied section 17(6) to the complainant's request dated 4 May 2022."

12. The IC then added the following:

"30. Although not subject to this Decision Notice, the Commissioner has noted similar subsequent requests made by the complainant to WYCA dated 17 May 2022 and 4 March 2023 where WYCA has relied on Section 17(6) of FOIA.

31. It is likely the Commissioner would also find these requests vexatious for the reasons mentioned above and the Commissioner will consider his powers under section 50(2)(c) of FOIA to refuse to deal with subsequent complaints relating to similar requests on the basis that they are vexatious or frivolous."

Appeal to the First-tier Tribunal

13. The FtT confirmed the IC's decision. In its reasons the FtT recited both the request of 4th May 2022 and that of 17th May 2022. It set out the relevant legislation and then the approach to section 14 as established by case law. It then stated:

"17. We accept, as noted above, that there is a high hurdle in establishing that a request is vexatious. We have no reason to doubt the sincerity of the appellant's belief that there has been a significant degree of wrongdoing of prominent people during COVID and that the appellant has sought to report crimes which he believes those people have committed. It is against that background that we have considered this request.

18. We observe first that the initial formulation of the request on 4 May 2022 "Is the mayor aware of the law breaking by her policing and crime office, and if so, then what reason was she told to justify it" is not a matter which is easily considered as recorded information. The second complaint is, at best, a request for policing objectives and is more in the form of a statement as to the appellant's beliefs than a request for information."

14. The FtT referred to the two previous IC decision notices which were relied on by the IC in regard to the 4th May request and recited the reasons set out there for WYCA having implemented the unreasonable behaviour policy.

15. The FtT found as follows:

> "21. Whilst there may not have been a particular burden in this case given the notification supplied earlier that further requests could be seen as vexatious, there is a pattern here of requests relating to a specific area, that is the wrongdoing by public figures and the extent to which it has not been properly investigated by West Yorkshire Police. We note that this is not in our view a well-focused request for information and that there is a pattern here of multiple FOIA requests being submitted over a significant period
>
> 22. In assessing the motive, we observe that there is no need to provide a reason for making a request for information but the proper application of Section 14 cannot sidestep the question of the underlying rationale or justification for the request. What may begin as a reasonable request may, in the wider context of what has happened subsequently, result in requests being increasingly distant from the starting point. That, we consider, is a relevant factor in this case.
>
> 23. We also see little or no value or purpose in this request given that it is not in reality a request for recorded information but is seeking evidence of an opinion.
>
> 24. There is little evidence before us that there has been distress caused to staff, but there is the use of intemperate language and that there are wide-ranging and unsubstantiated allegations of criminal behaviour, as noted in the decision notices.
>
> 25. We note that it has been explained to the appellant why West Yorkshire Police had not recorded any reported crime, an explanation that does not appear unreasonable.
>
> 26. Taking all of these factors into account cumulatively, we find that WYCA was entitled to refuse the request pursuant to Section 14(1) of FOIA. We consider also that in the circumstances of this case, and on the basis of these findings, and given the previous warning served on the appellant, that under Section 17(6) of FOIA, WYCA were entitled not to issue a refusal notice as they were right in considering that the request was vexatious and had previously properly refused a request on that basis. Accordingly, they were entitled pursuant to Section 17(5) not to have to issue a refusal notice. Accordingly, for these reasons we dismiss the appeal."

16. The FtT refused permission to appeal.

Appeal to the Upper Tribunal

17. On giving permission to appeal, Upper Tribunal Judge Jacobs made the following observations:

> "5. The tribunal considered two requests. One was: 'is the mayor aware of the lawbreaking by her policing and crime office, and if so, then what reason was she told to justify it?' The tribunal said that that 'is not a matter which is easily considered as recorded information.'
>
> 6. I am more concerned about how the tribunal dealt with the other request, which was:
>
> 'I am writing to ask what are your policing objectives with regards to the criminal misconduct in the high offices of state, as I believe that this crime represents by far the biggest threat to the people of West Yorkshire.

…

'We are governed by criminals and crime is a matter for the police. What are this areas objectives in relation to this crime?'

Of this, the tribunal said:

> 18. … The second complaint is, at best, a request for policing objectives and is more in the form of a statement as to the appellant's beliefs than a request for information.
>
> 21. … We note that this is not in our view a well-focused request for information and that there is a pattern here of multiple FOIA requests being submitted over a significant period.
>
> 23. We also see little or no value or purpose in this request given that it is not in reality a request for recorded information but is seeking evidence of an opinion.

7. It is true that the request for objectives contained statements of Mr Kennaugh's beliefs that may not be shared by the public authority, but within it are two clear questions. They ask the same thing and could be answered without reference to the beliefs. The questions seem to me to be well-focused and do not ask for evidence of an opinion. It may be that the answer would lead to further questions, which might be vexatious, and could be treated accordingly."

18. The IC has provided written submission in response to the appeal and both parties made further written submissions pursuant to further directions by me, and these were supplemented by Mr Kennaugh and by Mr Davidson (counsel for the IC) at the oral hearing of this appeal. I am grateful to both for their assistance.

Legislative framework

19. Section 1(1) of the Freedom of Information Act 1990 (FOIA) provides that any person requesting information from a public authority has a right to be informed by the authority in writing whether it holds the information and to have that information communicated to him, if the public authority holds it.

20. That right is subject to a number of exemptions and disapplications including under section 14. Section 14 (1) provides that a public authority is not required to comply with a request for information under section 1(1) FOIA if a request is vexatious.

21. Section 17 provides:

> "(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm of deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
>
> (a) states that fact;
>
> (b) specifies the exemption in question, and
>
> (c) states (if that would not otherwise be apparent) why the exemption applies.
>
> …

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

22. Section 50 provides for applications for decisions by the IC and includes:

"(1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.

…

(4) Where the Commissioner decides that a public authority –

(a) has failed to communication information, or to provide confirmation or denial, in a case where it is required to do so by section 1(1), or

(b) has failed to comply with any of the requirements of sections 11 and 17,

the decision notice must specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.

23. Section 57 provides for a right of appeal against any decision notice.

24. Section 58 provides:

"(1) If on an appeal under section 57 the Tribunal considers-

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."

25. In *Information Commissioner v Malnick and ACOBA* [2018] UKUT 72 (AAC) at [46] and [90], the Upper Tribunal held that under section 58 the FtT exercises a full merits jurisdiction, standing in the shoes of the IC.

The issues before the Upper Tribunal and the submissions of the parties

26. In the light of the written observations made by Judge Jacobs and by me, and the written submissions of the parties, it was agreed at the hearing that the issues are:

a The scope of the appeal.

Mr Kennaugh submits that the IC's decision notice and the subsequent proceedings concern both the request of 4th May and that of 17th May. The IC submits that only the request of 4th May is within scope.

b Whether section 17(6) is a procedural or substantive provision and the consequence of the correct analysis.

The IC submits that it is procedural. It does not of itself require a finding that the request is vexatious. However, even where section 17(6) applies, the authority will have failed to comply with its duty under section 1(1) unless the request is vexatious. Mr Kennaugh agrees that the substantive application of section 14 must be addressed.

c Whether the FtT was correct on the application of section 17(6).

Mr Kennaugh submits that WYCA should give reasons for reliance on section 14. The IC submits that the FtT was correct as regards section 17(6).

d Whether the FtT was correct on the application of section 14.

This is the core of Mr Kennaugh's case. He submits that his requests were reasonable, that the FtT has treated him as a vexatious requester rather than considering the particular request, that the request was different to previous ones, and that the FtT has not conducted a sufficiently detailed assessment of the course of dealings between himself and WYCA but has merely adopted previous findings by the IC.

Mr Davidson for the IC notes that it is not the role of the Upper Tribunal to stand in the shoes of the FtT and remake the assessment of the issues under section 14 but to consider whether the FtT's assessment and decision involved an error of law. His position is that only the 4th May request is in issue in this appeal, and that the FtT took into account the relevant considerations and on a holistic assessment its decision was lawful.

27. Before turning to these issues I must address one other matter raised by Mr Davidson on behalf of the IC in written and oral submissions. He submits that the grant of permission by UTJ Jacobs was limited to the FtT's decision in regard to the request of 17th May 2022. UTJ Jacob's reasons for giving permission were limited to that request.

28. I had already indicated in case management directions dated 11th November 2025 that I considered that the grant of permission was not limited. I now confirm that view. Upper Tribunal Judge Jacobs did not limit the grant of permission. The decision notice simply stated "Permission to appeal is given". In his observations, Judge Jacobs did not say that he had no concerns about the approach to the 4th May request. He said that he was "more concerned" about how the FtT dealt with the 17th May request, and so naturally his observations were directed to that.

Discussion and conclusions

a) Scope of the appeal

29. As set out above, Mr Kennaugh's complaint to the IC concerned the lack of response to the request of 4th May. Despite the Decision Notice referring to that

request and the "similar request" of 17th May, the Decision Notice clearly stated that only the request of 4th May was within scope. Consistently with that, paragraph 29 only related to that request and at paragraph 30 the IC stated that the request of 17th May was not within scope.

30. The FtT's power under section 58 of FOIA was to consider "the notice against which the appeal is brought". That notice concerned only the request of 4th May. The request of 17th May had not been an issue in the correspondence with the IC and the IC was clear that it was not within the scope of the Decision Notice. There was no suggestion in the appeal that the notice was not in accordance with the law because it failed to address the request of 17th May. The only issue before the FtT was whether the Commissioner's decision in regard to the 4th May request was in accordance with the law.

31. The FtT recited both requests but the reference to the second request appears to have been by way of background and context. It is clear from paragraph 23 of the FtT's reasons, which could only have been a reference to the request of 4th May, that that was the request under consideration. The second request was not within the scope of the appeal to the FtT and it is not within the scope of the appeal to the Upper Tribunal.

b) Section 17(6) – a procedural or substantive provision?

32. The character of section 17 has been considered in a number of previous decisions of the Upper Tribunal. None of those decisions specifically address subsections (5) and (6) but those provisions do for an authority that relies on sections 12 and 14 what subsections (1) – (3) do for an authority relying on the section 2 exemptions. What is said in these cases is equally applicable to subsections (5) and (6).

33. In *DEFRA v IC and Birkett* [2011] UKUT 39 (AAC) Upper Tribunal Judge Jacobs said at [32]:

> "As I read section 17, what the authority has to do is to identify the information covered by the request and then either disclose it or say why it is not doing so. That is an administrative process."

34. UTJ Jacobs continued:

> "33. Mr Swift pointed out that section 17 is not a formal decision that is subject to a form of appeal under section 50. I would generalise that submission and say that the process undertaken by the public authority is not an adjudicative procedure that results in a decision."

35. In *Malnick* (referred to above), a three judge panel of the Upper Tribunal (myself and UTJJ Wikeley and Wright) explained the interaction between sections 1, 17 and 50 of FOIA:

> "74. The first decision-maker in the statutory process is the public authority. Its duties are found in Part 1 of FOIA. An authority must confirm or deny whether requested information is held, and communicate the information which it holds, unless a relevant exemption applies: section 1(1). If an authority communicates information it must do so in accordance with section 11. Where it refuses to either confirm or deny, or to communicate information, it must issue a refusal notice in accordance with section 17 setting out all the exemptions claimed and why they apply. A public authority which correctly applies one of the exemptions on which

> it relies but incorrectly relies on others, and provides reasons and information in accordance with section 17, has complied with its duties under Part 1. It has complied with its duties under section 1 because section 1 permits it to withhold information to which any exemption applies. It has complied with its duties under section 17 because it has set out the basis on which it is claiming all exemptions relied on. It does not matter that it also incorrectly relies on other exemptions because the scheme of Part 1 means that, although a public authority must state all the exemptions which it relies upon, it need only be right about one of them.
>
> 75. This analysis is consistent with the powers of the Commissioner to issue a decision notice under section 50(4). Under paragraph (a) the Commissioner must require a public authority to take steps to correct a failure to communicate information or issue confirmation or denial where it is required to do so by section 1(1). But where one exemption is correctly relied on by the authority, there has been no failure to comply with section 1(1) even if the other claimed exemptions do not apply. This explains why section 50(4) does not make any provision for a decision notice to address those other exemptions. Under 4 paragraph (b), the Commissioner must specify the steps to be taken to correct a failure to comply with sections 11 or 17. But, even if an authority wrongly relied on some exemptions included in its refusal notice, this would not amount to a failure to comply with either section."

36. In *Oxford Phoenix Innovation Ltd v IC and MHRA* [2018] UKUT 192 (AAC) I explained at [38] that the above passages in *Malnick* show that section 17 does not have a substantive content. Section 1 requires an exemption to be correctly relied upon, and section 17 simply requires proper notification of the exemptions relied upon. At [42] I clarified that section 17 was nothing other than procedural in nature.

37. The relevance of this in the present appeal is to underline that WYCA's reliance on section 17(6) to justify not responding to the request does not have any bearing on its duty to comply with the substantive provisions of section 1. An authority need not be correct about its reliance on section 14 in order properly to rely on section 17(6). However, where it relies on section 14 to relieve itself of the obligations under section 1, it must be correct that section 14 applies.

38. It follows that the IC's role under section 50 was to consider not only whether WYCA had complied with the procedural requirements of section 17 but also whether it had complied with the substantive duty to communicate information pursuant to section 1(1). Section 50(4) makes it clear that these are two distinct matters.

39. So in the present case there were two separate questions for the IC and for the FtT: a) was the request vexatious within section 14? b) did section 17(6) apply to excuse the notification requirement?

Section 17(6).

40. The FtT first considered whether the request was vexatious and then went on to consider whether section 17(6) applied. This was not wrong, but it could have considered them in reverse order as section 17(6) does not require a finding that the request was vexatious. I am not sure that the FtT fully appreciated that but it made no material difference.

41. It was clear that WYCA had relied on section 14 – that was the heart of the appeal before the FtT. Therefore section 17(6)(a) was satisfied.

42. The FtT also found that WYCA had notified Mr Kennaugh on a previous request that it relied on section 14. This was an undisputed matter of fact and subsection (b) was satisfied.

43. Finally, as to reasonableness in subsection (6)(c), the FTT considered "all the circumstances" that were relevant in this case: that the request was vexatious, that WYCA had previously properly refused a request on the basis of section 14, and that it had given Mr Kennaugh a warning that it would rely on section 17(6) in regard to future requests. The last of these is consistent with IC guidance that usually subparagraph (c) requires that the authority has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.

44. It follows that there was no error of law by the FtT in regard to section 17(6).

d) Section 14.

45. The Upper Tribunal has on many occasions addressed the approach under section 14 to vexatious requests. The leading authority is *IC v Devon CC and Dransfield* [2012] UKUT 440 (AAC). The analysis and guidance given there, at [24]-[39], was not challenged on the subsequent appeal to the Court of Appeal – [2015] EWCA Civ 454 – and the Court of Appeal did not cast doubt on that guidance. The guidance has been helpfully summarised by the Upper Tribunal in *CP v IC* [2016] UKUT 0427 at [22]-[30].

46. I do not repeat all the relevant passages from the above judgments, but it is helpful to set out the four broad issues or themes identified by UTJ Wikeley in *Dransfield* as of relevance to the decision whether a request is vexatious, but are not to be taken as exhaustive or as creating a formulaic check-list. These are: (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. The Upper Tribunal said at [45] that it was important to adopt a "holistic and broad approach … emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where is a previous course of dealing, the lack of proportionality that typically characterise vexatious requests".

47. As for evidence, in *Dransfield* in the Court of Appeal Arden LJ said at [68] that "Parliament has chosen a strong word which therefore mans that the hurdle of satisfying it is a high one…"

48. In *CP v IC* (cited above) UTJ Knowles (as she was then) said at [34] that in cases where past dealings are of relevance, "an appropriately detailed evidential foundation addressing the course of dealing between the requester and the public authority is a necessary part of [the] assessment. A compendious and exhaustive chronology exhibiting numerous items of correspondence is not required but there must be some evidence, particularly from the IC, about the past course of dealing between the requester and the public authority which also explains and contextualises them."

49. In the present case, the FtT referred to the Upper Tribunal decision in *Dransfield,* the above four themes identified by Upper Tribunal Wikeley in that case, and that these are not prescriptive. The FtT noted the following: that the burden on a public

authority may be linked with the previous course of dealing, in particular the number, breadth, pattern and duration of previous requests; that motive may be relevant to the inherent value of the request; and that there is a high hurdle in establishing that a request is vexatious.

50. The FtT's summary of the required approach to whether a request was vexatious was brief but adequate. It correctly summarised the main principles and guidance in *Dransfield.* It focussed in particular on those issues which were relevant to the case in hand: burden linked to a previous course of dealing, and the link between motive and the inherent value of the request.

51. I have set out at paragraph 15 above the passages in which the FtT addressed the substantive question of whether the request in this case was vexatious.

52. The two previous IC decision notices that the FtT referred to were evidence in themselves of two requests for information made shortly before that of 4th May and also related to the same concerns. The IC had determined both of these to have been vexatious. In addition there was the request of 17th May which, although not in identical terms, was clearly related to the same matters.

53. The FtT cited from parts of the previous IC decision notices it clearly had in mind all the evidence in those notices. That included the information provided by WYCA that there had been a number of FOIA requests of a similar nature, their attempts to advise him and provide alternative methods of communication, and that in their view Mr Kennaugh was using FOIA inappropriately to challenge policy or legislation rather than to seek information. These were all relevant evidence before the FtT. It was not necessary for the FtT to specifically cite all of that evidence.

54. However the FtT did cite those parts of the previous decision notices which make clear that WYCA had felt it necessary to restrict Mr Kennaugh's contact with it because of the impact of his communications.

55. In the light of this, I reject Mr Kennaugh's submission that there was an insufficient evidential foundation as to the course of dealings between him and WYCA. The FtT was entitled to rely on the evidence contained in previous IC decision notices. Those notices had not been challenged. In this appeal Mr Kennaugh has not submitted that the facts set out there are materially incorrect. In drawing on the evidence contained in the previous decision notices, which conveniently set out in one place the relevant facts, the FtT was taking a proportionate approach to its task. It was not required to go back to the source material where the evidence had already been collated by the Information Commissioner.

56. It would not have been legitimate for the FtT merely to have adopted the IC's decisions on vexatiousness as the basis for finding that the request before it was vexatious. But that is not what the FtT did here. It made findings of fact based on the evidence contained in the previous decision notices, and then assessed vexatiousness of the request in the light of those findings of fact and reached its own conclusions on that matter.

57. The FtT's reasoning and conclusions in regard to vexatiousness are set out at paragraphs 21-26, which I have cited above.

58. The FtT noted that there may not have been a particular burden in this case because WYCA had notified Mr Kennaugh that further requests could be seen as vexatious but it correctly directed itself that it could take into account a pattern of

requests relating to a specific area. Its finding that there was such a pattern in this case was supported by the evidence.

59. As for motive, Mr Kennaugh submits that he is and was entirely reasonable in his objectives. However, the FtT correctly noted that what started as a reasonable request can become unreasonable in the wider context. What it said at paragraph 22 is entirely consistent with *Dransfield* at [34]:

> "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."

60. The FtT briefly addressed value or purpose. The FtT's finding that the request was seeking evidence of an opinion" was relevant because that would tend to show that Mr Kennaugh's purpose was not truly to obtain information and it diminished the serious purpose and value to be attributed to the request. In the context of this case, there was no need to say more. As the Upper Tribunal said in Dransfield at [38], this is bound up to some degree with motive (which the FtT had already addressed) and in any event lack of objective value cannot alone provide a basis for refusal under section 14 unless there are other factors which raise vexatiousness (as there were in this case).

61. The fact that the appellant had been provided with what the FtT judge to be a reasonable explanation as to why no reported crime had been reported was also a relevant factor looking at the matter as a whole.

62. I therefore conclude that there was no material error of law by the FtT in deciding that the request of 4th May 2022 was vexatious.

Conclusion

63. In the light of the above I dismiss the appeal.

Kate Markus KC
Judge of the Upper Tribunal
(sitting in retirement)

Authorised by the Judge for issue on 13th March 2026