



**Appeal number: EA/2016/0100**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**DEBBIE BRYCE**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER  
THE GOVERNING BODY OF THE UNIVERSITY  
OF CAMBRIDGE**

**Respondents**

**TRIBUNAL: JUDGE ALISON MCKENNA  
Dr HENRY FITZHUGH  
Ms MARION SAUNDERS**

**DATE OF PROMULGATION: 12<sup>TH</sup> DECEMBER 2016**

**Determined on the papers, the Tribunal  
sitting in Chambers on 18 November 2016**

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## DECISION

1. The appeal is dismissed.

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## REASONS

### *Background to Appeal*

2. The Appellant made a request to the Governing Body of the University of Cambridge (“the University”) on 11 June 2015 for information about its alumni associations. This was a subject about which they had corresponded previously and  
10 both the University and the Information Commissioner had concluded that the Appellant had previously made vexatious requests, within the meaning given to that term by s. 14 of the Freedom of Information Act 2000 (“FOIA”).

3. The University did not respond to the Appellant’s request of 11 June 2015, or to her request for an internal review, in reliance upon s.17 (6) of the Freedom of  
15 Information Act 2000. This legislative provision permits a public authority to not respond to an information request where it regards that request as vexatious and where it has given the requester notice in relation to a previous request that it regarded it as vexatious and where it would be unreasonable in all the circumstances to expect the public authority to serve a further notice in respect of the current request.

4. The Information Commissioner issued Decision Notice FS50601710 on 9 March 2016, upholding the University’s decision. The Information Commissioner stated that she was satisfied both from the wording of the request and from previous dealings with the Appellant (this is the fifth Decision Notice involving this Appellant and the University) that the request was vexatious, that an appropriate notice had been  
20 served and that it was not reasonable in all the circumstances of the case for the University to be required to respond to the request.  
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### *Appeal to the Tribunal*

5. The Appellant’s (undated) Notice of Appeal raises a considerable number of issues which are beyond the remit of the Tribunal in considering an appeal against a  
30 Decision Notice (see “*The Legal Framework*” below). In particular, it is not possible for this Tribunal to re-open issues in relation to previous Decision Notices which were not appealed at the relevant time. It is also not possible for this Tribunal to give the Appellant advice as to how best to manage any future correspondence with the University. The Appellant does not appear to dispute that s. 17 (6) was engaged,  
35 although she does dispute that her previous requests were vexatious.

6. Since the filing of her Notice of Appeal the Appellant has made further submissions which we have read but we find that they do not provide us with a legal basis for disturbing the Decision Notice under appeal.

7. The Information Commissioner's Response dated 10 May 2016 maintained her analysis as set out in the Decision Notice. She submits that the only matter for the Tribunal to consider is whether she was correct to decide that the University was entitled to rely on s. 17 (6) FOIA.

5 8. The University's Response dated 7 June 2016 concurs with the analysis of the Information Commissioner and sets out a brief history of its long-running pattern of correspondence with the Appellant.

9. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The  
10 Tribunal considered an agreed open bundle of evidence comprising some 300 pages, including submissions made by all parties, for which we were grateful.

### *The Legal Framework*

10. Section 14 (1) and (2) of FOIA provides that:

15 *(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  
20 reasonable interval has elapsed between compliance with the previous request and the making of the current request.*

11. Section 17(5) and (6) of FOIA provide that:

*(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  
25 complying with section 1 (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*

30 *(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.*

12. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

*(1) If on an appeal under section 57 the Tribunal consider -*

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(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,  
5 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  
10 which the notice in question was based.

13. We note that the burden of proof in satisfying the Tribunal that the Commissioner's decision was wrong in law or involved an inappropriate exercise of  
15 discretion rests with the Appellant.

### *Conclusion*

14. We agree with the Information Commissioner that the only matter we can consider in this appeal is whether the University was entitled to rely on s. 17 (6). We are concerned therefore primarily with matters of procedure. It is not open to us to  
20 un-pick the University's view that a previous request was vexatious. We note however that there is not a blanket ban on all correspondence and that the University would have to be satisfied that any future request from the Appellant was vexatious within the meaning given to that term by FOIA before being able to rely on s. 17 (6) in relation to any future request. We also note here that it is the request and not the  
25 requester that must satisfy the statutory criteria for vexatiousness.

15. We find that the University did regard the previous request (dated 28 October 2014) as vexatious. That judgement was upheld by the Information Commissioner in a previous complaint but was not appealed to the Tribunal. We find that the University then served a notice on the Appellant (dated 11 November 2014) under s.  
30 17 (5) FOIA. In those circumstances we find that it was entitled to rely on s. 17 (6) FOIA in not responding to the request of 11 June 2015. It informed the Appellant on 19 June 2015 that the request of 11 June raised matters that it had repeatedly addressed in the past.

16. We find that the Information Commissioner's Decision Notice was correct in its  
35 findings both of fact and law and for all these reasons we now dismiss the appeal.

**(Signed on the original)**

**ALISON MCKENNA**

**DATE: 12 December 2016**

**PRINCIPAL JUDGE**