



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

Appeal No: EA/2010/0196

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50537068

Dated:

Appellant: Anthony Stott

Respondent: The Information Commissioner

Heard on the papers: Fox Court

Date of Hearing: 10 November 2014

Before

Chris Hughes

Judge

and

Mike Jones and Darryl Stephenson

Tribunal Members

Date of Decision: 29 December 2014

REASONS FOR DECISION

Introduction

1. Mr Stott was concerned to obtain information about a prosecution by the Health and Safety Executive which he claimed took place about thirty five years ago and related to the negligent examination of a crane in a scrap yard by an employee of Eagle Star Insurance. He made a request which was rejected as exceeding the cost limit for such requests and on 23 May 2013 he submitted a further request:-

You state the HSE holds 10 files with information that may relate to Eagle Star Insurance

I do not expect you to make a manual search of each file.

However, could you supply from each file:-

- A) *The Court Name and address where any action/prosecution has taken place and the date.*
- B) *The roll number of the court case.*
- C) *Each file will have a contents page or equivalent. Could you please supply photocopies of such.*

From this information – I should be able to narrow the search.

2. On 2 August 2013 the HSE refused stating in its letter:-

As previously advised, the information you request is unlikely to be held by HSE due to the time period in question, however, following a search of our historical records HSE established that we held 10 files in our central storage depot that contain a reference to “Eagle Star Insurance”. Unfortunately the only way HSE could establish if this reference pertained to the information you require would be to undertake a manual search of every file. I estimated that this would take in excess of three full days and therefore exceed the cost limit.

In your letter of the 21st May you have stated that you do not wish HSE to make a manual search of the ten files identified but have asked to be supplied with information that could only be obtained following a manual search of every file on a

page by page basis. Unfortunately, the ten files in question do not have a contents page, as you have assumed, therefore HSE cannot use this to expedite the search. As a contents page is not held in each of the ten files, HSE are unable to provide you with a copy of the information, as it is not held.

I am therefore refusing your request under section 14(2) of the FOI Act on the grounds that your request is repeated and under section 13 of the FOI Act on the grounds of cost.

3. Following a complaint by Mr Stott the respondent in these proceedings, the Information Commissioner (the ICO) exercised his discretion to consider the complaint without the public authority conducting an internal review and issued a decision on 8 July. The ICO (and HSE) concluded that section 14(2) did not apply however he upheld the position of the HSE on the grounds of cost. He found that the HSE had identified 12 files containing the words “Eagle Star”, two were missing and three destroyed. The HSE estimated that each file contained a minimum of 500 pages and on the basis of an individual needing one minute to review a double-sided piece of paper to review all the files would take 70 hours at a cost of £1750 which significant exceeded the cost limit of £450.
4. In his appeal Mr Stott criticised several elements of this reasoning. He did not consider that every page needed to be read, he pointed out that court bundles needed to be paginated and indexed with evidence and witness statements correctly itemized and numbered *“This information has to be easily accessed in the court bundle/file. I called this information the contents page. Perhaps I should have used a different legal term for this and I feel HSE may have exploited the situation because I used contents page”*.
5. The criticisms raised by Mr Stott were realistic and the ICO in his response to the appeal properly conceded that the estimate from the HSE was not realistic. Although the files were paper and not electronic which would render searching harder it would not be necessary to consider each and every page. The Tribunal concurs; the nature of the material means that it would require only a brief inspection of each file to determine whether it was relevant; as Mr Stott correctly pointed out, a litigation file containing a court bundle is structured and designed to be easily followed and searched by the court.

6. However in his decision notice the ICO summarised the evidence submitted by the HSE and the HSE's conclusion on that:-

“... it said that it believes that the information the complainant is seeking has most probably been destroyed. The Commissioner understands that the court case the complainant is interested in took place in 1978/79, however, the HSE has said that its policy at the time was to review information to see whether it ought to have been retained after 9 years. Therefore it has said that it is likely that prosecution data relating to a case brought in 1978/79 would have been reviewed for retention in 1987/88.

14. Due to the volume of enforcement cases it understands the HSE has said that its policy is to retain information beyond the 9 year period if it is considered key or of particular significance. The HSE gave the example of information relation to the Piper Alpha disaster as information which was considered as sufficiently significant to be worth retaining beyond the 9 year period. In contrast it said that information relating to the prosecution of Eagle Star Insurance is likely to have been considered routine and not retained beyond the first review period. On this basis it considers that it is more than probable that the information the complainant is seeking was destroyed in either 1987 or 1988. However it cannot absolutely confirm this without searching the files referred to in the complainant's request and it is on this basis that the request as refused under section 12.”

7. The HSE has also confirmed that none of the titles of the seven files that it has found indicate that it relates to the prosecution of Eagle Star Insurance.
8. Mr Stott disagrees with the conclusion of HSE and regards the case as a significant precedent; a leading case in the field and that it should therefore have been retained.

Consideration

9. While the Tribunal acknowledges the importance of the issue to Mr Stott and that he considers this case highly significant and that it should have been retained by HSE, the Tribunal is not convinced by his approach. The HSE is a large organisation which conducts many prosecutions each year. Any single prosecution, whether in Magistrates' or Crown Court is of importance to the individuals affected but does not lay down any matter of principle upon which future prosecutions may be based. The

prosecuting authority relies on statute law and the decisions of the higher courts. The records of a single prosecution are unlikely to have a wider significance and there would be no business need to retain them. The Tribunal is satisfied that a sufficient search has been carried out for the file and that the reason for concluding that the information requested does not exist is far more probable than not – the file was destroyed many years ago as part of routine file destruction of routine case files.

10. The Tribunal therefore rejects the appeal and for the reasons stated above substitutes the following decision notice:-

On the balance of probabilities the information requested was not, at the time of the request, held by or on behalf of the HSE and that therefore the HSE was not obliged to comply with section 1(1) of the Act.

11. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 29 December 2014