



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

Appeal No: EA/2015/0004

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50548527
Dated: 9 December 2015**

Appellant: Charles Stuart

Respondent: The Information Commissioner

Heard at: Newcastle

Date of Hearing: 7 May 2015

Before

Chris Hughes

Judge

and

Malcolm Clarke and Paul Taylor

Tribunal Members

Date of Decision: 28 June 2015

Date of Promulgation 29 June 2015

Attendances:

For the Appellant: in person

For the Respondent: did not appear

Subject matter:

Freedom of Information Act 2000 s14(1), s14(2)

Cases:

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 9 December 2014.

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

Appeal No: EA/2015/0004

SUBSTITUTED DECISION NOTICE

Dated: 11 June 2015

Public authority: Ministry of Defence

Address of Public authority: Whitehall, London, SW1A 2HB

Name of Complainant: Charles Stuart

The Substituted Decision

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 9 December 2014.

Action Required

The public authority discharges its obligation under s16 and assists the appellant by providing him information as to the meaning of the abbreviations used in parts 1 and 2 of the request – DPH(RAF), DDH1th, HQPTC and HQ 1 GP and information it holds as to the location of HQ PTC and HQ 1 GP within 35 days.

Dated this 28 day of June 2015

Judge Hughes

[Signed on original]

REASONS FOR DECISION

Introduction

1. Mr Stuart served in the RAF. In 1991 he had an accident on duty. He was invalided out of the service in 1995 and received substantial compensation from the Ministry of Defence (MOD) in 2004. Since then he has made a number of requests for information which have been dealt with by the MOD.
2. On 26 February 2014 he wrote to the MOD enclosing or referring to and quoting from 3 letters from 1994 arising out of a complaint he had made about how he had been treated – two of the letters were from RAF officers and one from a Minister in the MOD. He then made a five part request for information arising from that correspondence:-

“Please see attached a copy....

- I. Do you hold any information that would explain to me what the DPH (RAF) and DDH1th specifically means and the names and rank of people in A and B above who apparently investigated my case apart from DGMS (RAF).*
- II. In the letter of 15 July 1994 it states that under information: HQ PTC and HQ 1 GP. Please can you provide information that helps me to understand what HQ PTC stands for, who is HQ1GP and where these HQ’s either based or located.*
- III. Also in the 15 July 1994 letter it refers to the AOC MU’s. Please provide a copy of the relevant Air Force List that shows the name and rank of the AOC MU’s that Sqn Ldr Singleton refers to.*
- IV. At C above the Minister stated that “this submission has been investigated by senior RAF medical staffs”...Can you please provide the information as to who (names and rank) these senior RAF medical staffs were that the Minister refers to.*
- V. In 2004 I accepted damages for Employers Negligence re: the 1991 Belize accident, not the QR1625 medical accident case which was not part of the legal process. I believe I signed a form in 2004 that*

precludes me from making any further claims in relation only to the 1991 accident in Belize, please supply me with a copy of this signed form that the MOD hold.”

3. The MOD replied on 9 April (bundle pages 64-66). It listed 12 FOI requests made over the years, referred to a previous decision of the tribunal relating to his requests and commented:

“Although all have been related to some aspect of your medical negligence cases, there has been significant drift in focus over the course of your requests. Initial queries for policy documents relating to medical negligence have become requests for policy documents on the procedures for drafting Ministerial Correspondence ... The tribunal recognised that you are trying to understand how matters were handled in your case through requesting policy documents...

Additionally your requests relate to issues covered in the adjournment debate of February 2009 and seem intended to reconsider issues that have already been debated and considered at length. It does not appear to acknowledge the clear position of the Department, which you have been aware of since 2004, that you have been recompensed for the injury suffered in 1991 through your compensation claim. This was a full and final settlement that legally binds both yourself and the MOD.

I have to advise you that the Ministry of Defence regards your request dated 26 February 2014 as a vexatious request under Section 14(1) of the Act.”

4. The schedule listing a number of previous FOI requests included numerous requests for details of MOD officials and RAF personnel who over many years have been involved in some way with events flowing from his injury. The requests included:-

- i. Name rank and qualifications of DGMS (RAF) who conducted Mr Stuart's medical negligence investigation under QR 1625 in 1994
- ii. Full name and rank of DGMS (RAF) for 1991 and 1992
- iii. Requesting proof for statements made by the Minister in an adjournment debate in the House of Commons on his case in 2009

5. In addition there was not listed a request made on 3 January 2013 which was the subject of a decision of this Tribunal (EA/2013/0210), which related to MOD policies in medical negligence cases and also:-

“In the light of the oversight I have outlined in paragraph 2 on page one, could there be any more evidence on record within the Ministry of Defence that MOD had failed to disclose to me about this case...”

6. The Tribunal in that case upheld the conclusion of the Commissioner that no more information disclosable under FOI was held and it noted that all information which was disclosable under a subject access request had been disclosed in 2009.
7. Mr Stuart complained about the handling of 26 February 2014 request to the Respondent in these proceedings “the Commissioner”. The Commissioner conducted an investigation, noted the MOD’s claims that Mr Stuart was unreasonably persistent, (including in contacting a retired individual at home), that there was limited value in what was sought. Mr Stuart argued that he was seeking a criminal investigation into how in his view the MOD had abused its duty of care. The Commissioner concluded that the requests were disruptive and would not lead to a re-opening of an MOD investigation, there was no particular public interest in disclosure and *“the complainant was simply seeking the information to pursue a highly personalised matter in order to challenge the MOD on an issue which has already been fully considered by the MOD”*. He concluded that the MOD was entitled to rely on 14(1).
8. In his appeal he accepted that request 3 related to information in the public domain.

The appeal to the Tribunal

9. In his submissions Mr Stuart told the Tribunal that he was actively contemplating instituting proceedings to challenge what he viewed as clandestine activity in 1994 and he required the further information to help him investigate wrong-doing. He had consulted a barrister (at the cost of £1200). The barrister felt she had 90% of the information she needed from Mr Stuart’s files. She wanted information from his medical records and her preliminary advice was optimistic. He felt that the request would help his legal team. He

felt that it was very unlikely that he would need to seek more information. The information could help his legal team uncover a conspiracy. He wished to discover whether medical people examined his case in 1994 *“if I can get the names and then can clarify whether they looked at my case or not”*. He had put in a serious complaint and felt that the MOD was large and had well-trained staff and could not understand how he was causing disruption or irritation. He claimed that he had tracked down and met a former RAF officer in 2013 who confirmed to him that there had been a cover up and he had been ordered not to disclose information to Mr Stuart. Mr Stuart argued that he needed to know who the people involved were so that he could ask them what they knew. He confirmed that he had approached the GMC with a view to seeking disciplinary action against a doctor. In the light of his investigations he would consider approaching the GMC again and also the regulatory body for physiotherapists. He referred to the view of the Service Complaints Commissioner that the system failed to handle complaints by service personnel properly and regretted that the age of his complaint was such that it could not be taken to her.

10. With respect to the information sought he explained that in 1994, when he had received the correspondence with the abbreviations in it, he had not asked for explanation. He had gone to the British Library in February this year and found the answer to request 3. He confirmed that he no longer sought the information within request 5. He argued that he had had two distinct complaints (QR 1001) which related to the incident when he was injured and another (QR 1625) which related to complaints of subsequent professional and medical negligence.
11. Mr Stuart argued that the latter complaint had never been satisfactorily resolved and disputed the conclusion of the Commissioner (dn paragraph 23). On this basis the Commissioner had justified reliance on s14(1) (that the request was vexatious) in circumstances in which the Commissioner felt there was “not... overwhelming” detriment to the MOD. This may not accurately reflect Mr Stuart’s attempts to resolve a matter which has seemingly been life-changing. Neither does it acknowledge the possibility that an injury, serious enough to warrant compensation, may have been exacerbated by

inappropriate medical treatment. There is some public interest in resolving whether or not that was the case, even more so this being a member of the armed forces on whom the country relies for its defence.

12. The Tribunal noted that there had been a number of requests for information, both under FOIA and subject access requests under DPA. They have been spread out over time. The Tribunal noted the overlapping and repetitious nature of his requests and that the previous Tribunal had found that there was no further information held by the MOD about his case. Mr Stuart put forward nothing to indicate that there was any further information about his case which is held. All his medical records have been disclosed under the DPA. Through the course of his requests the names of individuals concerned in his case have been requested and where the information is held they have been disclosed. There is no more information relevant to his case.
13. It is therefore at this stage appropriate to consider the request made by Mr Stuart.
14. Request 5 was for details of his agreement settling his personal injury claim, was no longer pursued.
15. Request 4 was for the names of senior medical staff referred to in the Minister's letter of 11 November 1994. However this request for information is for a subset of information comprised within his request of 3 January 2013 seeking "*any more evidence on record within the Ministry of Defence that MoD had failed to disclose to me about this case, especially from Air Marshall Sir John Baird DGMS (RAF) and his staff officers or any other evidence that is not contained in the file currently with Minister..*" The tribunal has already found (EA/2013/0210) that no such further information is held.
16. Request 3 was for a copy of the relevant Air Force List for 1994. Mr Stuart has already found this as a publicly available document.
17. Request 2 is for the elucidation of the meanings of abbreviations and the location of various units referred to in the 1994 letter.
18. Request 1 was for an explanation of further abbreviations and "*and the names and ranks of the people in A and B above who apparently investigated my case apart from DGMS (RAF).*" However the tribunal has already found that

there is no further evidence on record that the MoD has failed to disclose about his case (EA/2013/0210).

19. It is therefore clear that with respect to substantive information Mr Stuart is treading a well-trodden path where the tribunal has already determined that no further evidence is held. The requests for substantive information have already been considered by the Commissioner and upheld by the tribunal that no further evidence is held. Although the MOD and ICO has characterised these requests as falling within s14(1) they are more appropriately considered as repeat requests which fall within s14(2). Since the requests relate to events 20 years ago it is highly improbable that there could ever be further information held by the MoD and therefore the "reasonable interval" before making a repeat request is exceptionally long.

20. However it may be possible for the MOD to supply the meanings of abbreviations used in its 21 year old correspondence and the location of the units to which it refers and the Tribunal therefore directs that the MOD consults its records, determines whether it holds information as to the location of these units and a glossary of the meaning of the abbreviations and if so, supply that information.

21. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 28 June 2015