



IN THE FIRST TIER TRIBUNAL

Appeal No: EA/2015/0140

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

On appeal from the Information Commissioner's Decision Notice No FS50557697 dated 8 June 2015

Before

Andrew Bartlett QC (Judge)

Melanie Howard

Dave Sivers

Determined on the papers

Date of decision 9 November 2015

APPELLANT: BILAL GHAFOR

RESPONDENT: INFORMATION COMMISSIONER

Freedom of Information Act 2000 – request for information – whether valid request by tweet – s1, s8, s11

Evans v IC [2012] UKUT 313 (AAC)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal. The Tribunal does not uphold the full reasoning of the Commissioner's Decision Notice, which should be read subject to the Tribunal's reasons set out below.

REASONS FOR DECISION

Introduction

1. This appeal raises questions about the use of Twitter to make or answer an information request.

The request, the public authority's response, and the complaint to the Information Commissioner

2. On 7 August 2014 the Press Office of the Department for Work and Pensions ('DWP'), using the Twitter username @dwppressoffice, tweeted the following message:

More than 99% of jobs on Universal Jobmatch are genuine – and we're working to tackle the tiny percentage which don't meet our terms.

3. On the same day Mr Ghafoor, using the Twitter username @FOIkid, responded:

@dwppressoffice FOI request: copy of internal report or assessment, including all data considered and method, for this assertion. Thanks.

4. On 29 August he sent an email to DWP, chasing them for a response.

5. On 5 September DWP responded:

@FOIkid sorry for not replying sooner. Unfortunately we can't respond via Twitter but we will send a full reply to your email address.

6. On the same day Mr Ghafoor replied via Twitter:

@dwppressoffice yes you can. Upload to website and tweet link.

7. On 12 September DWP emailed Mr Ghafoor, stating that there was 'no set report or assessment' for the assertion in the tweet of 7 August. 'This percentage was calculated by the team responsible for removing non-genuine accounts from the service from their own records.'

8. On 15 September, by email, he asked for an internal review, requesting that DWP consider:

(1) 'Medium through which this was communicated to me, despite my express desire that it should be tweeted.'

(2) 'Timeliness (not even a mention of lateness, let alone an apology)'

(3) 'Whether any relevant information is held.'

9. DWP responded on 30 September. (1) On the first point DWP referred to its right to communicate information under the Freedom of Information Act ('FOIA') by any means

reasonable in the circumstances. (2) DWP denied that its response had been outside the statutory time limit, contending that Mr Ghafoor's tweet of 7 August did not 'state the name of the applicant and an address for correspondence'. (3) As regards the information held, the original answer was maintained.

10. Mr Ghafoor complained to the Information Commissioner. He raised the same three points as above, with fuller explanations.

11. After investigation, the Commissioner issued his Decision Notice on 8 June 2015. On the three points raised, his decision was:

(1) DWP was entitled to refuse to provide a response via Twitter. It was not in breach of FOIA s11.

(2) DWP was in breach of FOIA s10 because it did not respond within the statutory time limit.

(3) DWP was incorrect to say that the requested information was not held. This was a breach of FOIA s1.

12. The Commissioner required DWP to issue a new response complying with FOIA s1(1) or a valid refusal notice.

The appeal to the Tribunal and the questions for the Tribunal's decision

13. Mr Ghafoor appeals against the determination that DWP was not in breach of s11. The question for the Tribunal is whether this determination was correct. This question requires consideration of some related questions upon which this determination depends.

The relevant provisions of FOIA

14. Section 1 provides:

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

... ..

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny".

15. Section 8 provides:

(1) In this Act any reference to a "request for information" is a reference to such a request which—

(a) is in writing, (b) states the name of the applicant and an address for correspondence, and (c) describes the information requested.

(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request—

(a) is transmitted by electronic means, (b) is received in legible form, and (c) is capable of being used for subsequent reference.

16. Section 10(1) provides:

(1) ... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

... ..

(6) In this section—

“the date of receipt” means—

(a) the day on which the public authority receives the request for information

17. Section 11 provides:

(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

... ..

(2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by particular means, the public authority may have regard to all the circumstances, including the cost of doing so.

(3) Where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.

(4) Subject to subsections (1) and (1A), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.

Analysis

18. As is well known, Twitter is an information network which uses messages with a limit of 140 characters. Messages may include photos, videos and weblinks. Twitter users have a unique username, which is preceded by the @ symbol. Each user has an online profile, which may display information about the person who uses a particular username. This information can be viewed by the public. The content and extent of the displayed information is a matter for the user's choice. The profile will normally contain a bio, which is a personal description limited to 160 characters, but there is no obligation to include information revealing any personal details, such as the user's real name. While the Twitter Rules contain a prohibition on the impersonation of another person so as to deceive, there is no requirement to provide the user's real name or a geographical address. Some users do not provide any personal information in their profile.

19. The Commissioner's reasoning in his Decision Notice was:

- a. Contrary to DWP's view, the information request in Mr Ghafoor's message of 7 August 2014 was a valid request under FOIA: 'the information available from the complainant's Twitter handle provides an address for a response to be sent to and clearly displays the complainant's name. This would meet the criteria in section 8(1)(b) of the Act'.
- b. DWP's response on 12 September 2014 was out of time, being more than 20 working days after 7 August.
- c. A response on whether information was held could be made by a tweet containing a link to an online response. The Act assumes that the public authority will respond to the address used to make the request 'and this address must be responded to if no other address is available, but it is reasonable for a public authority to use a different address for genuine reasons of practicality or protecting personal information.'
- d. Section 11(1)(a) allows the applicant to express a preference for the form or format of communication of *the requested information* pursuant to s1(1)(b), not of *whether information is held* pursuant to s1(1)(a). Thus DWP did not breach s11(1)(a).

20. The Commissioner also commented:

'The Commissioner would accept that an applicant could express a preference for the requested information to be provided in the form of a tweet. However, it will rarely be practicable to do this within the character constraints of a tweet and the public authority would be able to consider other practicable forms, for example

sending the information in a document format. Section 11(1)(b) would not cover a preference for document to be published linked from a tweet.’

21. The background to Mr Ghafoor’s arguments was press speculation about jobs advertised on DWP’s Universal Jobmatch website which were not genuine. He stated:

‘The DWP chose to tweet bold claim about how this situation had been reversed. I specifically made a request through the same medium through which DWP has chosen to make its claim. It was therefore very reasonable to expect the DWP to reply through this medium and to give equal publicity for the evidence as it did for its claim.’

22. Mr Ghafoor accepts that, as a matter of express statutory language, s11 is concerned with the means of communication of the requested information pursuant to s1(1)(b), not with the duty to confirm or deny pursuant to s1(1)(a). (We would add that subsections 11(2)-(4) are subsidiary to subsection 11(1).) However, he argues that, while there is no express requirement for s1(1)(a) corresponding to the s11 requirements for s1(1)(b), it would be counter-intuitive to permit the public authority to use a different means of communication for s1(1)(a) than the means appropriate for s1(1)(b). He refers to the Commissioner’s reasoning set out at paragraph 19c above. He also argues that it is improper for the public authority to demand, for carrying out the duty to confirm or deny whether information is held pursuant to s1(1)(a), an address different from the one stated in the request; he suggests that, if a public authority can ask for alternative contact details, this would be a breach of the 3rd data protection principle.¹

23. Mr Ghafoor contends that, where an information request has been made by a tweet, it should be responded to by a tweet, where reasonably practicable. He refers to DWP’s own practice of publishing information by using tweets and links: ‘Where a public authority repeatedly tweets links and has a published log of replies such that it can tweet a link, it clearly becomes utterly practicable to tweet a link.’

24. He points to the consequences if the Commissioner’s view of s11 is correct:

‘The consequence ... is that, even where it is practical to send the information through the medium, the public authority can ask for a different address and use that to confirm or deny whether the information is held.

For instance, where I email a FOI request, while I can ask for an electronic copy of the information to be sent to me and the public authority would need to provide me with any information electronically, the consequence of para 16 [of the Commissioner’s decision] is that the public authority can demand alternative contact

¹ ‘Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.’

details just for the element of confirming or denying whether the information is held.

This is clearly not what the ICO or the FOIA intends and I therefore think that this is an error in reasoning and interpretation as it leads to a clear unintended consequence.'

25. In our judgment the proper starting point for consideration of the issue in the appeal is the set of requirements contained in FOIA s8 for a valid request under s1. There are three requirements. It must be in writing (further defined in s8(2)); it must state the name of the applicant and an address for correspondence; and it must describe the information requested.
26. These requirements are to be read in the context of the purpose of the Act, which was passed in order to promote increased disclosure of information held by public authorities, subject to carefully defined limits. The Preamble to the Act states that it is 'to make provision for the disclosure of information held by public authorities'. Underlying the Act is an assumption that there is a general public interest in the transparency of public authorities: see, for example, *Evans v IC* [2012] UKUT 313 (AAC), [127]-[133]. Disclosure is considered to be generally in the public interest because it promotes transparency, accountability, public confidence, public understanding, the effective exercise of democratic rights, and other related public goods. The potential benefits of disclosure include the pressure to make governmental decisions and use governmental resources in ways that will withstand public scrutiny. They also include the enabling of constructive public debate, which in effect enlists the help of responsible members of the public in fostering good government. However, the Act itself acknowledges that disclosure of information by public authorities can be burdensome and expensive. Thus it contains provisions which entitle public authorities to decline to answer vexatious or repeated requests (s14) and requests which will be unduly expensive to deal with (s12). Section 12(4) authorises regulations to provide that where two or more requests for information are made to a public authority (a) by one person, or (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
27. The Act therefore presupposes that the rights under s1 are to be properly invoked by someone who is entitled to invoke them. The express language of s8(1)(b) requires 'an' address for correspondence and 'the' name of the applicant. When dealing with a request a public authority is entitled to know the real name of the person who has made it. Were it otherwise, the efficacy of the limitations imposed by ss12 and 14 would be undermined. In addition, in our view an 'address for correspondence' must be intended in s8 to be an address which is suitable for correspondence between the public authority and the requester concerning the request.
28. In our view Mr Ghafoor's tweet of 7 August 2014 did not satisfy the requirements of s8. In our judgment a Twitter username is not 'an address for correspondence' within the meaning

of s8. A means of communication which is limited to 140 characters is unsuitable for correspondence between the public authority and the requester concerning the request.

29. In addition, the tweet did not contain Mr Ghafoor's real name. A Twitter user's real name may or may not be stated in the user's Twitter profile. We acknowledge that on the facts of this case Mr Ghafoor's name was readily available to the public authority; in this case it was a simple matter for the authority to look at his profile. But there is a question of principle here. Section 8 does not entitle a requester to impose on a public authority the task of looking elsewhere than the request itself to discover the requester's real name. On the contrary, s8 explicitly requires the request to state the name of the applicant. Mr Ghafoor's request did not do so. The fact that, in the particular circumstances of this case, ascertaining the applicant's real name could not have been easier, did not convert a request not meeting the requirements of s8 into a compliant request.
30. We therefore accept DWP's contention that Mr Ghafoor's tweet of 7 August 2014 did not state the name of the applicant and an address for correspondence. In our judgment the Commissioner ought to have accepted this contention.
31. We would add that we do not consider DWP's practice of publishing information by using tweets and links to be relevant to whether Mr Ghafoor's tweet complied with the requirements of s8. A public authority may choose to disseminate information to the public in a variety of ways. This cannot affect the statutory requirements for making a valid information request under s1(1) in accordance with s8.
32. Since the 'request' was not a valid information request under s1(1), it follows that DWP was not in breach of the s10 time limit and was not in breach of s11.
33. We consider that the provisions of the Act are clear, concerning how the public authority should communicate with the applicant in fulfilment of its duty to confirm or deny under s1(1)(a). It should communicate to the 'address for correspondence' stated by the applicant in the information request. Thus we agree with Mr Ghafoor that the public authority cannot demand, for carrying out the duty to confirm or deny pursuant to s1(1)(a), an address different from the one stated in the request.
34. Section 11 is not relevant to the duty to confirm or deny. It is relevant only to the fulfilment of the duty under s1(1)(b) to provide the requested information.

Conclusions

35. The appeal must be dismissed. The Commissioner was right to conclude that DWP was not in breach of s11, but his reasoning was in error. The reason for his conclusion should have been that Mr Ghafoor had not made a valid information request under s1 in compliance with the requirements of s8.

Signed on original

/s/ Andrew Bartlett QC, Tribunal Judge