



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2017/0233**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50654011**

**Dated: 17 July 2017**

**Dates of Hearing: 22 March 2018 and 19 November 2018**

**Before**

**JUDGE ROBERT GOOD**

**TRIBUNAL MEMBER(S)**

**MRS ANNE CHAFER AND MR PAUL TAYLOR**

**Between**

**SIMON PRICE**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**Respondent**

**Subject Matter:**

Freedom of Information Act 2000 (FOIA)

Section 31 (Law Enforcement)

## DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

### REASONS FOR DECISION

#### **Factual background**

1. The appellant, Mr Simon Price applied under FOIA for information concerning the Tarbiyah programme, an Islam educational programme in prisons. This request was made on 8 June 2016. The requested information consists of a power point presentation, a student workbook and a teacher's manual.
2. The MoJ responded stating that it held the information requested and could arrange for Mr Price to see the programme. This would be dealt with outside of FOIA.
3. Mr Price repeated his request that the information be provided under FOIA on 18 July 2016. The MoJ then responded that it was refusing to provide the information requested relying on S.31(1)(f) FOIA. This view was not changed following the internal review.
4. Mr Price complained to the Information Commissioner. As part of her investigation, the MoJ provided to the Commissioner a copy of the teacher's manual, a power point presentation and a student's workbook.
5. The Information Commissioner decided on 17 July 2017 that the power point presentation and the student workbook were not exempt information and should be disclosed. She also decided that the teacher's manual was covered by S31(1)(f) and that it was not in the public interest for it to be disclosed. As part of her investigation the Information Commissioner commented that, because of the

volume of material, she had looked at sample pages of the teacher's manual and was satisfied that the exemption applied.

6. On 6 October 2017 Mr Price appealed. In his appeal he stated that it was clear he needed the teacher's manual to make sense of the power point and the student workbook. He stated that the documents provided had no index, structure or guidance and, as such, were incomprehensible. In respect of the teacher's manual he said, "If the teacher's manual channels and directs the course of study to which the presentation and workbook relates, then the manual cannot intelligently be said to prejudice the maintenance of security and good order in prison". He also stated that the teacher's manual was already in the public domain, that the prejudice has not been established and it was not in the public interest for the teacher's manual to be kept disclosed. He also wanted to see the power point on a CD or DVD.
7. At the first hearing, on 22 March 2018, the Tribunal established with Mr Price that there was some indexing of the bundle at the beginning of the appeal papers. What he had been provided with was a printout of the power point presentation and a printout of the student's workbook.
8. Mr Price stated that he had a laptop with no internet connection but with the facilities to play DVDs, contrary to the statement made by the MoJ. He said that he had been made the offer of watching the DVD with an Imam but had never been given the DVD to watch on his own laptop. He had declined the offer to watch the DVD with an Imam.
9. The Tribunal decided to adjourn the hearing. This was because the Tribunal was not clear whether there were four courses as referred to in the power point of course 1. The Tribunal was also not clear about the reasons for refusing to provide the DVD to Mr Price. Finally, the Tribunal wanted a fuller explanation of

the Information Commissioner's consideration of sample pages of the Teacher's manual.

10. The Tribunal issued the following Directions:

- a. The Information Commissioner is to enquire from the MoJ whether there has been disclosure of all four courses. If there are more than one course an explanation as to why there has not been disclosure of the other courses. If there is only one course an explanation of the references in the material to four courses.
- b. The Information Commissioner is to enquire why the DVD of the power point has not been provided to Mr Price given that he has a DVD player on his laptop.
- c. The Information Commissioner is to indicate the pages of the Teacher's manual in the closed bundle that she considered and give further details of how the prejudice applies to these pages.

11. In response, the Information Commissioner made enquiries from the MoJ, who replied:

"The Tarbiyah Programme consists of four courses, but only the first of these courses has been developed and launched."

12. In response to the issue of the method of disclosure, the MoJ stated that the Governor of HMP Wakefield had given "careful thought as to how to make the material available to Mr Price so the Department could meet its obligations under FOIA, while balancing that against his obligations as a prison governor. His conclusion was that, while the material Mr Price has requested is not sensitive in normal circumstances, its circulation round the prison could cause some unrest. He decided that Mr Price should see it under supervised conditions to avoid the possibility of its onward use/misuse with the establishment."

13. The Information Commissioner informed the Tribunal that, while the senior case officer viewed a representative sample across all of the withheld information, viewed the DVD, and cross-referenced the sample with the power point and the workbook, no notes were retained and so no further information about this process can be provided.
14. The Tribunal decided to reconvene because it was unlikely that further clarification on the issues sought by the Tribunal would become available. The Tribunal reconvened on Monday 19 November 2018 with a video link to Mr Price in Wakefield HMP. No-one else attended.
15. At the start of the hearing it was agreed that the Tribunal had to consider two issues. Had there been effective disclosure of the power point presentation and the workbook? And secondly, should there be disclosure of the teacher's manual? It was accepted that only course 1 has been developed and launched.

### **Findings, Reasons and Conclusions**

16. Mr Price has been provided, as directed by the Information Commissioner, with the power point presentation and the student workbook. In the Tribunal's view both are comprehensible without the teacher's manual. There is only course one and this is divided into separate units which are marked and can be followed.
17. Mr Price has been offered the opportunity of watching the DVD. This is an offer which he has declined because it would be supervised. The Tribunal is satisfied that Mr Price has been given this information, in printed form and with an opportunity to see it on screen.
18. The Tribunal finds that there has been disclosure. Mr Price argued that this was not effective disclosure and there was no reason for the MoJ not to provide him access to the power point itself. He has a DVD player and a laptop which can play

DVDs. There is no possibility of making copies and he would return the DVD having viewed it. Mr Price is not willing to view it supervised by an Iman.

19. The MoJ has discretion as to how to disclose information by virtue of S.11(2) and (4). There is a starting point of providing information in the manner requested, but all circumstances can be taken into consideration. The Tribunal is satisfied that there has been disclosure in printed form and a qualified offer of viewing material as a power point and that this meets the requirement of disclosure as ordered by the Information Commissioner.

20. The teacher's manual goes over the same course areas as set out in the power point. It provides greater detail, quoting from religious texts, including the Quran. Mr Price claimed that the teacher's manual is, in effect, available on the internet but not as a complete document. The Tribunal accepts that parts of the manual are quoted in various forum articles which have been placed on the internet. But, it is not a published document. If available to the public, the choice and selection of particular texts may be controversial both to Muslims and non-Muslims in prison. It is the combination and choice of particular texts and the exclusion of others that is likely to provoke disagreement. The material may also be used against Muslim prisoners.

21. One of the reasons for the adjournment was that there is a lot of material and the Tribunal wanted to have identified the material sampled by the Commissioner which led to her opinion. In the absence of any further assistance, the Tribunal considered all the teacher's manual. There were sections of the manual where it was more likely to prejudice good order in prison than other, less controversial sections. However, throughout the manual it was the selective nature of the passages, which would likely prejudice good order. The choice of which passages to include and which to exclude. The Tribunal considered that prisons, by their nature, are more at risk of a breakdown of good order and this material was likely to risk such a breakdown by being misconstrued.

22. The MoJ relied on the contention that the information was self-evidently likely to prejudice good order without any detailed analysis of why. However, the MoJ did say that the programme is being revised and that two versions being available would cause confusion and could be prejudicial to good order. They also argued that without a 'teacher' to explain and respond to questions, the material could be misinterpreted and this had the potential to inflame the situation in prison. They also argued that the release of this information would allow others to formulate alternative narratives to undermine the programme and this would have the effect of prejudicing good order.
23. Of these arguments, the Tribunal found that the need for a 'teacher' to explain and respond to the material the most persuasive. By their nature, the texts and quotes set out in the teacher's manual have been selected and it is likely that some prisoners would take issue with the selection and the message behind that selection. Without an explanation being set out by a teacher able to understand the objection and explain the choice, then this material is capable of being misinterpreted.
24. It is a relatively simple process to take a selected piece and misinterpret it, or take it out of context, with the intention to cause discord and undermine the prison establishment. Such distortions are less likely if the material is explained through a teacher and properly placed in context.
25. The Tribunal has relied on the written submissions, Mr Price's evidence and the panel's reading and understanding of the withheld material.
26. Mr Price argued that the material cannot be prejudicial because it was being taught to prisoners, because it was referred to in religious discussions, and because at least 3,000 prisoners had received the information in the teacher's

manual. Mr Price said that he has subsequently been told that a more up to date number is 5,000 prisoners and that the programme has now been discontinued.

27. Mr Price also said that, in his experience, the justification of 'good order' was used as a backstop to refuse requests, and that the MoJ had failed to justify why this information should be withheld. He also said that if the Tribunal was unconvinced by the arguments at the last hearing, and no new evidence has been provided, then this should mean that disclosure should be ordered.

28. Having considered all of the teacher's manual, the Tribunal accepts the argument put forward by the MoJ that the manual, by itself without moderation through a teacher, runs the risk of being distorted, taken out of context and used as a method of sowing discontent amongst prisoners.

29. The Tribunal find that the tests set out in the Information Commissioner's decision notice at paragraph 15 onwards are established.

30. With respect to the public interest test, this exemption is a qualified exemption and the Tribunal considered the balance of public interest. There is a public interest in disclosing the material. It would provide to the public greater knowledge and understanding of this programme being delivered in prisons. The same arguments, for not disclosing, also apply to the public interest in non-disclosure. There is a danger of the information being taken out of context, misused and there is strong public interest in avoiding likely prejudice to good order in prisons and that the public interest in avoiding this outcome is of greater weight and supports the exemption.

Signed

R Good

Judge of the First-tier Tribunal

Date: 19 November 2018

Promulgated date: 20 November 2018