



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

**Appeal Reference: EA/2019/0102**

**Before**  
Judge Stephen Cragg Q.C.

**Tribunal Members**  
Ms Anne Chafer  
and  
Mr Henry Fitzhugh

**Between**

**Chris Spiropoulos**

Appellant

-and-

**The Information Commissioner**

Respondent

Sitting at Field House on 22 August 2019 and 18 November 2019

Representation: The Appellant appeared in person

The Commissioner was not represented

## DECISION AND REASONS

### THE REQUEST, THE DECISION NOTICE AND APPEAL

1. In this matter, on 23 August 2018, the Appellant wrote to the Ministry of Justice (the MoJ) and requested information in the following terms:

Dear Her Majesty's Courts and the Tribunals Service, (Central London County Court)

I would like to receive a copy of your GoldFax logs (08707394144) showing transmissions received for the following periods:

1. 12/7/16 between 22:00 and 23:00
  2. 24/7/16 between 21:00 and 23:00
  3. 30/10/16 between 13:00 and 14:00.
- 
2. The result of this request was that the Ministry of Justice (MoJ) said that it did not hold any information falling within the scope of the request, and the Commissioner was satisfied that this was so.
  
  3. The Commissioner's decision notice of 14 March 2019 accepted the MoJ's case that the 'system is not set up to generate the information the [Appellant] has requested' (paragraph 15) and that there was no specific reason or statutory requirement to retain the information (paragraph 14). The Commissioner mentioned the MoJ point that two years had elapsed between the dates of the logs sought and the date of the request, and that this in itself meant that retention on that basis was unlikely in any event. The Commissioner also stated that:-

20. The only way it would be possible to identify whether a fax had been received during the periods specified in the request would be by referring to the individual case record to which the fax had been added (where appropriate). The Commissioner recognises that this approach to answering the request would be impractical, as without individual case details it would necessitate examining the record for every case that was held by the MoJ during the specified periods, which would almost certainly exceed the appropriate costs limit at section 12(1) of the FOIA. The Commissioner is also mindful of the wording of the request, which was for a copy of the transmission log of faxes received, rather than to know whether faxes were received in respect of individual cases.
4. The Commissioner thus decided that on the balance of probabilities the MoJ did not hold the information requested.
5. The Appellant appealed the decision on 28 March 2019. A main point he raised was that the Goldfax system is set up by default to retain information such as the information requested and that it would have to be specifically configured not to do so. He said there were very good reasons to keep the records, and that he was concerned that records might have been 'deliberately discarded'. For the first time, the Appellant indicated that there was a particular case that the request related to, and he gave the case reference number. He also included with his appeal notice four 'fax transmission tickets' relating to the dates mentioned in the request, showing that faxes had been sent to the court on those days.

#### THE FIRST HEARING DATE

6. At the hearing of the appeal on 22 August 2019 the Appellant pointed out that what he was requesting was, in effect, the electronic record of the receipt of faxes by the Central London County Court (CCLC) via the GoldFax system for three short periods. He told us that in his view these would be records stored on a computer and not on a traditional fax

machine. The Appellant showed us a read-out of the record from his computer which indicated the sending by him of faxes from his computer during the relevant periods. Although he does not use the GoldFax software, he uses something similar.

7. The Appellant also showed us some information about the GoldFax system. Part of this is in the bundle (page 51) and states that:-

GoldFax will automatically save copies of every fax sent or received in its status database.

8. This was confirmed by GoldFax in its letter to the Commissioner at (page 53), which stated that it is possible to log on and see when a fax was received, and see the fax image. The caveat to this was that the 'information is kept for as long as the period of time that is configured in their clean-up regime'. An example was given of a clean-up regime being set for 30 days, but it was not said that this was the standard setting.
9. When we looked at the documentation in the bundle with the Appellant in the hearing, we noticed that an email of 23 January 2019 from the MoJ to the Commissioner (page 57) seemed to assume that GoldFax had said that a 30 day period is the standard 30 day clean-up period. That email also says that it is 'unlikely' that GoldFax would be set to keep data longer than two years, but it does not explain what this view is based upon. We noted also that some of the information sought by the Appellant would have been generated less than two years before his request was made (the request was 23 August 2018 and the last date referred to in the request is 30 October 2016)
10. Even though the information sought by the Appellant is information stored as electronic data, we noted the MoJ responded to the

Commissioner on 3 January 2019 to say that its 'searches did not include electronic data': (page 49). We also noted that the MoJ had not properly answered the Commissioner's question as to 'what searches were carried out for information falling within the scope of this request' (also page 49). The answer was simply that 'a search for the information was carried out...' There was also a claim that there was an 'automatic deletion of the fax log' (page 50), which did not explain when this happened and appeared to be at odds with the information provided at page 57.

11. Having studied the available information, it appeared to the Tribunal that, on the face of it, the GoldFax system provides for automatic retention of electronic faxes and records, and that the MoJ had not sufficiently explained why it did not hold the information requested.
12. On that basis we adjourned the hearing, joined the MoJ to the appeal as a party, and made directions for a witness statement to address a number of issues as follows:-
  - (a) Whether the GoldFax system was in use at the time of the request.
  - (b) Whether the GoldFax system would have received faxes during the periods specified in the requests.
  - (c) Confirm that searches of electronic data have been carried out for the information requested, including the electronic records generated by the GoldFax system.
  - (d) Confirm whether or not copies of faxes (together with information about receipt) at the date of the request would have been 'automatically saved' in the GoldFax 'status database' (see page 51 of the bundle).
  - (e) If this is not the case, then confirm why not and whether or not the

GoldFax system was configured for 'automatic deletion' of the information as suggested (page 50), and provide documentary evidence that this was done.

- (f) If the information was automatically saved by the GoldFax system, then confirm (i) whether it is still held; (ii) if not when it was deleted; (iii) if deleted whether in accordance with a 30 day or two year policy (see page 57), or some other policy (please specify).

### FURTHER EVIDENCE AND APPLICATIONS

13. The MoJ has filed a witness statement signed on 7 October 2019 from Mr Michael Cranwell who is an operational support officer with Her Majesty's Courts and Tribunals Service (HMCTS) whose role includes responding to requests under FOIA, and who handled the Appellant's initial request.
14. Mr Cranwell now provides more detailed information about the position in relation to the retention of fax logs. He explains that, involved in the arrangements, was Atos IT services UK (Atos) which 'is an information technology services company which was formally contracted to provide IT services to the MoJ. Atos arranged the provision of the GoldFax solution to the MoJ for use in the Courts'. Mr Cranwell states that Atos has 'confirmed that the instance of GoldFax provided for the MoJ was configured to retain electronic data of faxes sent and received for a period of thirty days'. Bespoke scripts were created to remove records older than 30 days.

15. As such, Mr Cranwell says that data relating to faxes sent and received in 2016 were no longer available at the time of the request. Mr Cranwell was told by the Delivery Manager at the CCLC that CCLC receives in excess of 300 emails a day and that the capacity of 50GB to store emails can 'easily' be reached and then the inbox will not accept further emails. Therefore, the inbox needs to be 'robustly' managed. The evidence of Mr Cranwell evidence explains why in 2018 there are no records of GoldFaxes received in 2016. Mr Cranwell also states that GoldFax ceased to be used by the Courts in early 2019.
16. Mr Cranwell also reports that the Delivery Manager confirmed that case-related faxes are printed, matched with the file, and stored according to file-retention policies. Mr Cranwell finishes by saying that now the Appellant has provided the relevant case number it can be confirmed by CLCC that the case management system relating to the file shows receipt of the fax sent on 30 October 2016, but no receipt of anything on 12 or 24 July 2016.
17. Prior to the resumed hearing the Appellant made an application to the Tribunal for a direction that the court issue a subpoena for 'the person responsible for managing and running the MoJ's Goldfax server at (870)739-4144, so that he appears at the next hearing as a witness'; and also for the MoJ to 'provide a copy of the full case file [as referred to by the Appellant in his appeal] to the court and all parties'.
18. Both those applications were refused. It was decided that having directed and received a written statement from the MoJ to address particular points, it would not be proportionate, in the context of this case, to require oral evidence as well; and that the case file was not within scope of the requested information at issue in this appeal

## THE RESUMED HEARING

19. At the resumed hearing on 18 November 2018 the Claimant was not prepared to accept the contents of the witness statement of Mr Cranwell. He did not believe that the MoJ would commission the GoldFax system, which was a top of the range product, and then have it set to erase fax records after only 30 days. He thought that the MoJ had alighted upon the 30 days time limit only because it had been mentioned by GoldFax as an example, and not because that was, in fact, the configured time limit in place. He rejected the MoJ argument that limited storage space was one of the reasons why a short period of storage had been adopted, and argued that it would take many years to fill up a storage facility of 50 GB. He was aggrieved that the MoJ had not disclosed any policy documents to support its case. He argued that there was a legal duty to retain the records for 20 years under the Public Records Act 1958. The Appellant also suggested that CCLC was still using GoldFax (despite the evidence of Mr Cranwell) because on a standard form used by the court the word 'Goldfax' still appears next to the court's fax number.
  
20. The Appellant also argued that his request should not have been read so as to be limited to a 'copy of your GoldFax logs' which related to certain periods, but that the scope of his request should have been expanded to include any record of fax receipts included on the individual case file, and the case file itself.

## DECISION

21. Public authorities are under a general duty to disclose information they hold where it is requested: section 1 FOIA. By s1(1)(a) FOIA any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. By section 1(4) FOIA the



information is the information in question held at the time when the request is received, and information itself means information recorded in any form: see section 84 FOIA.

22. When a public authority says that it does not hold the information requested (or any further information), the Commissioner (and now this Tribunal) has to consider the searches made by the public authority and the explanations given and decide, on the balance of probabilities, whether the public authority is holding the information requested.
23. The Commissioner in the decision notice was satisfied on the balance of probabilities that the information was not held. This Tribunal had a number of further queries it wanted to make of the MoJ to clarify the points that had been made, before it formed its own view of the matter.
24. In our view the witness statement of Mr Cranwell adequately explains the MoJ's fax retention system. We now have a full explanation as to how GoldFax worked within the MoJ and as deployed at CLCC. We are satisfied that, as described, it was the system in place at the time of the request. The Appellant is still of the belief that information has been deliberately withheld or destroyed to cover up some wrong-doing. The available evidence does not support that belief, and the Appellant has not provided a credible motive as to why the MoJ would destroy or seek to conceal information that it holds.
25. We are doubtful whether the Appellant's objection (that a 50GB storage facility would take years to fill) to the MoJ's explanation about the retention period of 30 days is correct. However, that does not seem to us to be a central issue in the case. Even if the storage facility is as large as the Appellant claims, the MoJ would be entitled to only retain fax records for 30 days.

26. The fact that a standard court form has not yet been updated to remove the word Goldfax does not show that Mr Cranwell's evidence (that the use of GoldFax was decommissioned in early 2019) is wrong, and we accept his evidence that it has been decommissioned.
27. In our view the definition of 'public records' in the Public Records Act 1958 (PRA 1958) does not include records, for example, of fax communications. That is clear from paragraph 4(3) of Schedule 1 to PRA 1958 where 'records' are said to include 'records of any proceedings in the court or tribunal in question and includes rolls, writs, books, decrees, bills, warrants and accounts of, or in the custody of, the court or tribunal in question'.
28. In relation to the scope of the request and what searches should have been made for the information, we reject the Appellant's argument that the scope of the request would have required a search of his individual case file. His request for information specifically refers to 'GoldFax logs' from certain dates. The correct reading of the request, in our view, was that the Appellant was seeking all the logs from the periods referred to. There was nothing in the request that pointed the MoJ to a specific case or case file where a record of a fax transmission might be found, and the MoJ and the Commissioner were right not to assume that the Appellant wanted records relating to a particular case.
29. It was not until he filed his appeal notice that the Appellant first referred to a particular file. We note that, as set out above, Mr Cranwell has now received information from the file and related what he has been told, which should be of assistance to the Appellant. There is nothing to prevent the Appellant requesting access to his own case file (which appears to be still available) through the court administration, or even by way of a subject access request under the Data Protection Act 2018.

30. On the basis of the available evidence we are satisfied that, on the balance of probabilities, the MoJ does not hold the information sought within the scope of the request. We have required more detail on a number of issues than did the Commissioner, but we have reached the same conclusion. Our conclusion is that the appeal against the decision notice should be dismissed.
31. Finally, we should also mention that at both hearings the Appellant has challenged the independence of the Tribunal because of its inevitable links with the MoJ and HMCTS. We explained to the Appellant that we were the Tribunal set up by statute to hear his appeal, that we are as independent as we can be from the MoJ and HMCTS, and that there was no other tribunal to hear his appeal against the Commissioner.

**Stephen Cragg QC**

Judge of the First-tier Tribunal

Date: 21 November 2019

Promulgation date: 25 November 2019