



Tribunals Service
Information Tribunal

Information Tribunal

Appeal Number: EA/2006/0017

Freedom of Information Act 2000 (FOIA)

Heard at Procession House, London, EC4

Decision Promulgated 5th. March, 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

D.J. Farrer Q.C.

and

LAY MEMBERS

Ivan Wilson

and

David Wilkinson

Between

GUARDIAN NEWSPAPERS Limited

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

THE CHIEF CONSTABLE OF AVON AND SOMERSET POLICE

Additional Party

Representation:

For the Appellant:

Mr. Aidan Eardley

For the Commissioner:

Mr. Timothy Pitt – Payne

For the Additional Party Mr. Andrew Waters

Decision

The Tribunal upholds the decision notice dated 22nd. February, 2006 and dismisses the appeal. This decision was announced at the conclusion of the hearing. We now give our reasons.

Reasons for Decision

Introduction

- 1 Jeremy Thorpe was the leader of the Liberal Party from 1967 until 1976.
- 2 In October, 1975, a man named Andrew Newton, on Exmoor, shot dead a dog called "Rinka" and apparently attempted to fire his gun at Norman Scott, Rinka`s owner. The gun jammed.
- 3 Newton was convicted of offences relating to this attack and received a sentence of imprisonment. He was released in 1977
- 4 Following his release, he claimed that he had been hired to kill Mr. Scott as a result of fears that an alleged homosexual relationship between him and Jeremy Thorpe, dating back to the early 1960s, would be revealed to the public and of demands made by Mr. Scott on Mr. Thorpe in the years since the relationship was said to have ended. Such a relationship was always categorically denied by Mr. Thorpe.
- 5 An ensuing police investigation, conducted by the Additional Party ("A and S"), culminated in a trial at the Central Criminal Court in 1979 at which Jeremy Thorpe, David Holmes, George Deakin and John Le Mesurier were charged with conspiring and Mr.Thorpe additionally with inciting Holmes to murder Mr. Scott. All were acquitted on all charges. Mr.Thorpe took no further part in public life.
- 6 The trial provoked very great public interest at the time and was very fully and vividly reported by the media. The appellant ("the Guardian") referred further in evidence to certain television programmes in recent years which featured the case and to a book by Simon Freeman and Barry Penrose, published in 1996 which called into question the quality of the police investigation.

The Request

7 Rob Evans is a Guardian journalist engaged at the relevant time in investigations for Home News. On 17th. February, 2005 he made a request under FOIA to A and S for “complete copies of the force`s files” on the Thorpe case. It was refused, initially by reference to FOIA s. 12 (cost of compliance). Mr. Evans requested an index of documents held to enable him to refine the request, citing the authority`s duty to provide advice and assistance under s.16. Following negotiations with A and S as to limiting the scope of the request and a request for a review of a decision not to release information, it is evident that both sides treated the request as relating to the report prepared by the Senior Investigating Officer (“the SIO”) for the Director of Public Prosecutions. On that footing, A and S maintained the decision not to disclose by letter of 31st. May, 2005 It cited the exemptions provided by s. 30, s.38 and s. 40(2). Mr. Evans made a complaint to the Commissioner on 3rd. June, 2005, both as to the refusal and as to the failure to provide an index, which, he asserted, amounted to a breach of the duty imposed by s. 16.

The Decision Notice

8 The Commissioner received from A and S copies of the SIO reports in October, 2005 for the purpose of reaching his decision. By his Decision Notice dated 22nd. February, 2006, the Commissioner upheld the withholding of the requested information by A and S by reference to FOIA s. 30 (investigations conducted by public authorities) and, as to part of the information, s.40(2) (personal data). He rejected the justification based on s.38 (health and safety) ; that part of the decision was not challenged by A and S on this appeal and the Tribunal has not therefore considered it.

9 Section 30 confers a qualified exemption. The Commissioner identified three possible public interest arguments for disclosure :

- Exposure of the quality of the police investigation, as regards thoroughness, vigilance and transparency.
- Mr. Thorpe`s prominence in public life.
- The approaching removal of the exemption after thirty years provided for by s.63. (The relevant date was agreed at the hearing as 1st. January, 2010)

He identified four arguments for maintaining the exemption :

- An apparent retrial by the media after so long, possibly by reference to material that could not be presented at the trial, was undesirable and against the public interest.
- There was a risk of distress to all those involved in the trial and their families.
- The public might be deterred from giving information to the police if it is thought that information given in confidence could later be published.
- The existence of the thirty year exemption suggests that Parliament regarded that period and no lesser period as the appropriate interval before relaxation of the exemption.

He concluded that the interests in maintaining the exemption were stronger than those favouring disclosure.

- 10 He further decided that some of the information was absolutely exempt by virtue of s.40(2)(a) and (3)(a)(i) because it amounted to personal data which satisfied the first data protection principle.
- 11 He found as a fact that A and S held no index of documents in the case file and made no finding as to any breach of s.16.

The Appeal to the Tribunal

- 12 By Notice dated 22nd. March, 2006, the Guardian, as employer of Mr. Evans, appealed. It argued that the public interest in withholding this information was now weak whereas the closure of the investigation, the passage of time and the identity of the principal personality created a very strong public interest in disclosure. Further it argued the importance of police accountability in respect of investigations. Redaction, it said, could overcome problems of disclosure.
- 13 As to s.16, it further submitted that it was likely that A and S held an index.
- 14 In his Reply, dated 21st. April, 2006, the Commissioner referred to the analysis set out in the Decision Notice upon which he enlarged to some extent.

The Questions for the Tribunal

- 15 They were as follows :

- (i) For the purposes of s. 30(1), does the public interest in withholding this information outweigh the public interest in its disclosure ?
- (ii) Is certain information exempt by virtue of s. 40(2)(a) ?
- (iii) Did A and S breach its duty to advise and assist under s.16 by its failure to supply an index.

At the hearing it was agreed by all parties that no ruling should be sought on (ii) unless the Tribunal had first ruled in favour of the Guardian on (i). That seemed to us a sensible and economical use of time and costs. Since the Tribunal `s function under s. 58(1)(a) is to decide whether

“ the notice against which the appeal is brought is . . . in accordance with law “

it is not incumbent on us to review every finding within the Notice. We are concerned with the lawfulness of the overall decision, as viewed in the light of the evidence called before us.

As to (iii), it became apparent that no index had been prepared, contrary to normal practice in 1978/9. On an undertaking from A and S to seek to assist the Guardian by the provision of some similar document, this complaint was not pursued.

Accordingly, in the first instance at least, the sole issue for decision was (i).

The evidence and submissions before the Tribunal

- 16 A and S was joined as a party by the Tribunal of its own motion, by order of 24th May, 2006.

Evidence

- 17 Written statements were served by the Guardian (Rob Evans) and A and S (Ian Readhead, Deputy Chief Constable of Hampshire and National Lead for ACPO in respect of freedom of information). Both witnesses gave oral evidence at the hearing.
- 18 Mr. Evans related his own interest and role and emphasised the continuing public interest in the case, as demonstrated by T.V. programmes and the book published in 1996. He exhibited evidence of an adjudication of a complaint by Mr. Thorpe regarding a Yorkshire Television programme in 2002 and an extract from the book. He further produced records from files in the National Archive relating to criminal investigations by the Metropolitan Police, suggesting that such material was released quite frequently in advance of the thirty year deadline.

Mr. Readhead stressed the changes which had taken place in criminal investigation since 1979, for example in the content of an SIO report, which then frequently contained assessments of and personal comments on the credibility of potential witnesses and possibly informants. He urged the Tribunal to have regard to the need to encourage witnesses to come forward, free of concerns that they might be identified publicly even many years later. He had read the reports in question..

19 Submissions

Written submissions were received from all three parties and we heard further oral argument.

- 20 Mr. Eardley for The Guardian reminded the Tribunal that its task under s.58 was to look at the merits afresh. – see *Bellamy v Information Commissioner EA/2005/0023 AT [34]*. He argued that the Commissioner, in the Decision Notice appeared to have put the onus on the balancing of public interests the wrong way round – see *Hogan v Information Commissioner EA/2005/00026 and 0030 at [56]* and *DFES v Information Commissioner EA/2006/0006 [61] – [65]*.
- 21 He invoked the approach of the European Court of Human Rights to the application of Article 10 as showing that there was a particular interest in disclosure / publication where political issues, the administration of justice or public figures are involved. He cited the ACPO Protocol on the need for openness in the reporting of criminal proceedings.
- 22 He relied on the passage of time as greatly weakening the argument for maintaining the exemption. In particular, it was unrealistic here to suppose that future cooperation from the public would be endangered by publicity so long after a trial.
- 23 He argued that redaction would meet many of the objections from A and S, if, contrary to this submission, they had any merit.
- 24 Public knowledge as to the vigour and efficiency of the investigation was, even now, an important factor.
- 25 The Commissioner and A and S presented, not unreasonably, a broadly united front.
- 26 The Tribunal `s task was specific to this appeal; should these S.I.O. reports be disclosed in the circumstances of this case ?

- 27 Disclosure might discourage future potential witnesses, especially in high – profile cases.
- 28 The quality of the police investigation had been properly open to scrutiny at a public trial.
- 29 There was a danger of retrial by media.
- 30 There is a difference between the public being interested in a matter and disclosure being in the public interest.
- 31 Mr. Thorpe has not been a public figure for many years and there was no keen public interest in the case in February, 2005.

32 Conclusion

Before hearing oral submissions we read the SIO report which in fact is made up of six reports which are dated respectively 3rd. July 1978, 8th. September 1978, 26th. September 1978, 28th. September 1978, 15th. February 1979 and 12th. March 1979. Having done so, we obtained the consent of A and S to indicate to the Guardian and to any member of the public present what we now record in this judgment.

- 33 We are satisfied, albeit from a quick read through this material, that there is no hint whatever of an investigation which lacked vigour, thoroughness or independence. If there was a suspicion in some quarters that the police had “pulled their punches” because of the eminence of one of the suspects, the reports suggest nothing of the sort.
- 34 In our weighing of the public interests for and against disclosure, we should have regarded any inference of a lack of vigour or proper vigilance in this investigation which might properly be drawn from them as a decisive argument in favour of disclosure, even thirty years on and even faced by police concerns over the effect on future potential witnesses. If there were evidence to support a suspicion that a prominent public figure had been shown improper favour, there would be an overwhelming interest in telling the public. There was none.
- 35 Of course, that is far from the end of the matter. It was common ground that the s.30(1) exemption applied to this information and that we must simply decide whether the case for maintaining the exemption had been made out.

36 We make the following findings which bear on the weighing of the competing interests.

- i. The passage of time was a double – edged argument, whichever side wielded the sword. It probably reduced the risks of prejudice to future investigations but it similarly weakened the legitimate public interest in knowing more of the background facts.
- ii. There was little, if any evidence of any widespread current interest in the matter, witness the rather unconvincing material that the Guardian was able to marshal.
- iii. Mr. Thorpe ceased to be a public figure long ago and has made no attempt to seek a public role – quite the reverse.
- iv. The approach of the thirty – year “deadline” provided for by s.63 is irrelevant to our decision for two reasons :
 1. Parliament decided on thirty years, not twenty – seven. To use proximity as an excuse for disclosure would be to erode the interval which Parliament chose.
 2. It is not certain that disclosure will follow in 2010. Other exemptions may apply.
- v. Given our observations in paragraphs 34 and 35 , we can therefore find little, if any public interest in disclosure of these reports.
- vi. The arguments for maintaining the exemption are not overwhelming on the facts of this case.
- vii. We are not persuaded that distress to surviving participants in the trial is an interest which this particular exemption is designed to protect.
- viii. There is some risk that an attempt would be made to revisit the verdicts in the trial but the extent of that risk would depend on the precise content of the reports. We note in passing that there will always be a public interest in revisiting a possibly unjustified conviction. Save in the most exceptional case, there will be no comparable public interest in re – examining acquittals.
- ix. Whilst the passage of time is a significant feature of this case, we acknowledge an interest in principle, recognised by the exemption applying to s. 30(1), in protecting information acquired, often in confidence, in police investigations. Of course, every decision requires a separate review of the particular facts and the likely prejudice to future investigations resulting from disclosure of these reports may be less than would result from disclosure of more recent

investigations.. Nevertheless, this remains, in our judgement, a factor to which some weight must be given.

37 We therefore conclude that the public interest in maintaining the exemption outweighs the public interest in disclosure of this information.

38 In the light of that ruling and of the agreement with the parties referred to in paragraph 15, we heard no argument on the application of s. 40(2)(a) and make no finding as to the arguments advanced in relation to that provision in the Decision Notice.

39 Accordingly we uphold the Decision Notice.

Signed

David Farrer
CHAIRMAN

Dated this 2nd. day of March 2007

Corrected Version

Signed

David Farrer
CHAIRMAN

Dated this 5th day of April 2007