



Tribunals Service
Information Tribunal

Information Tribunal

Appeal Number: EA/2007/0029

Freedom of Information Act 2000 (FOIA)

Decision Promulgated

Date 29th August 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Chris Ryan

And

LAY MEMBERS

Marion Saunders

John Randall

Between

THOMAS BRODIE MACCLUE

Appellant

And

INFORMATION COMMISSIONER

Respondent

Decision

The Tribunal Upholds the decision notice dated 28 March 2007 and dismisses the appeal.

Reasons for Decision

Request for Information

1) On 19 June 2006 the complainant wrote a letter addressed to "The Prime Minister and Office". In it he referred to previous correspondence and requests for information and raised a number of matters which evidently caused him concern. The basis of his concern appeared to be that certain Muslim clerics, who he considered acted against the country's interests, were granted significant benefits which were denied to him, a disabled Scottish pensioner. Against that background he presented a number of issues to the Prime Minister, some of them in the form of questions. In essence they were as follows:

1. Why had [name] been granted over £33,000 in welfare benefits?
2. Who authorised such payments?
3. How long had [name] been paid benefits?
4. How long had [name] paid UK tax?
5. Why was [name] and his family granted council housing?
6. How long did [name] and family have to wait before getting a council house?
7. How soon after being allocated a council house did [name] sell it?
8. How much did [name] pay for his council house and how much did he sell it for?
9. How soon after [name] sold his council house was he and any member of his family re-allocated another council house?
10. How many wives and children does [name] have, who are in receipt of any welfare or other benefits?
11. Does each wife have a council house and other benefits?
12. For how long has [name], and any member of his family or families been known to present any kind of threat to the security and welfare of the country?
13. Why does the British Government allow such an evil enemy to continue to operate?
14. Why does [name] and all members of his family get instant access to legal aid?
15. How many more Muslims Clerics are awarded welfare benefits? How much do they receive? How many are allocated council housing? How many of them sold their council house? How many have then been re-allocated housing? How many are granted legal aid?

He then added the following questions (again in slightly edited form) about himself:

- 16 Why am I denied access to council housing in my ancestral home of [name]?
- 17 Why am I denied all the welfare benefits I should be entitled to?
- 18 Why am I denied access to legal aid and opinion?

- 19 Why are my legal and human rights abused by the Government and Prime Minister?
20 Why am I forced to live on a means tested pension at a particular sum?
21 Why am I subject to hatred and abuse by the Prime Minister.

- 2) We make two preliminary comments at this stage. First, although the Appellant referred in his correspondence to his rights under the Freedom of Information Act 2000 ("FOIA"), none of the questions put to the Prime Minister from the Appellant in fact constituted a request for information. Secondly, the requests have been treated throughout as requests to the Cabinet Office, which, as a government department, falls within the statutory definition of a public authority for the purposes of FOIA.
- 3) On 31 August 2006 the Prime Minister's private secretary wrote to the Appellant. His letter referred to the letter of 19 June and previous correspondence and stated that the requests were substantially similar to previous requests. It was said that the effect of FOIA section 14(2) was that they did not therefore have to be responded to. That subsection reads:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request"

- 4) The Prime Minister's Office would appear to have had a number of other possible grounds for rejecting these requests. Arguments that might have been available to it include the fact that (as mentioned above) some of the questions were clearly not requests for information at all, or were vexatious or related to information that would not be held by the Prime Minister's Office, or sought information that was the personal data of a third party and therefore exempt from disclosure under FOIA section 40. However, the only line of argument that was relied on was that the requests were substantially similar to ones that had been made previously.

Complaint to the Information Commissioner

- 5) On 11 September 2006 the Appellant complained to the Information Commissioner about the handling of his request for information. The Information Commissioner investigated the complaint and issued a Decision Notice dated 28 March 2007 in which he rejected the Appellant's complaint. He referred to eight letters, pre-dating the one dated 19 June 2006, and concluded that the request was substantially similar to previous requests the Appellant had made in those letters to the same public authority. Although he did not include a detailed analysis of the previous correspondence in order to demonstrate this, he referred to previous letters written to the public authority by the Appellant on 19 October 2005, 7 November 2005, 6 December 2005, 11 January 2006, 16 February 2006, 20 February 2006, 18 April 2006, 4 May 2006 and 19 June 2006.

He noted that the public authority had not responded to the earlier requests by disclosing the information requested but by explaining that it did not hold the information requested. It had explained that it had a defined remit and that the information requested was not held by it, although it might be held by other government departments. He concluded that this response complied with the public authority's obligations under the FOIA and that, as a reasonable interval had not elapsed since the previous request had been complied with, the public authority was entitled to rely on FOIA section 14 (2).

- 6) An issue had also arisen as to whether the public authority's initial response of 31 August fell outside the 20 working day period in which a request for information should be complied with (under FOIA section 17(1)). The Information Commissioner concluded that, as the public authority had previously informed the Appellant why his previous requests had been rejected, it would be unreasonable to require it to provide a further refusal notice within the statutory period. It is not clear from the Grounds of Appeal whether this issue formed part of the Appeal but we think that we should consider it.

Appeal to the Tribunal

- 7) On 8 April 2007 the Appellant launched an appeal to this Tribunal. His grounds of appeal were simply that the Information Commissioner had first indicated that there was a case to answer but then "withdrew because of undue pressure from the PM and the Officer of State". This was said to be a dereliction of duty by the Information Commissioner. However, we also took into account the terms of a letter written to the Tribunal on 31 March 2007, shortly before the Notice of Appeal was completed and submitted. In that letter the Appellant argued that the Prime Minister, as head of the Government, was responsible for every level of Government business. We understood him to mean that it was therefore appropriate for the questions that he had posed to be answered by the Prime Minister and not by any other Government department. The letter did not expand further on his reasons for claiming that the Decision Notice was wrong.
- 8) The Appellant asked for the Appeal to be determined on paper, without a hearing, and we have done so, relying upon a bundle of documents agreed by the parties. We also invited the parties to provide us with written submissions. Neither did so although the Appellant had previously written to the Tribunal with some comments on the case and we took these into account.
- 9) We have reviewed the correspondence from the Appellant listed in paragraph 5) above, as well as other letters from him including one dated 15 September 2005, which was cross referred to in his letter of 19 October 2005. We conclude that they raised the same issues as those incorporated into the questions set out in paragraph 1) above, although not in the same format. We have also looked at the correspondence sent to the Appellant in response to those letters. These included one dated 7

December 2005, written in response to the Appellant's letter of 7 November, which included the following passage:

“As stated in our letter of 31 October, the questions you have asked are not requests for information as defined under the terms of the Freedom of Information Act 2000. There is therefore no obligation for the Prime Minister's Office to respond to the questions you have posed, as they are not related to any information that is held here...”

We conclude that the public authority complied with FOIA sections 1 and 17 in the manner of its response, in both this letter and others written to the Appellant in response to his correspondence. It follows that, by the time that the public authority received the Appellant's letter of 16 June 2006, it had already complied with at least one request which was substantially identical or substantially similar. We also conclude that the time that had elapsed since compliance with the previous requests was not long enough for it to be reasonable to expect the public authority to treat it as a new request. The public authority was therefore entitled to rely on FOIA section 14(2) and reject the request.

- 10) We should add that the Information Commissioner lodged a Reply to the Appeal in which he sought to rely, in addition, on FOIA section 14(1) (vexatious request). That provision had not been referred to in the Decision Notice. In view of our conclusion under section 14(2) we do not need to consider whether the Information Commissioner should be allowed to rely on a new ground in this way or, if he may, whether it has any merit.
- 11) On the question of whether the public authority responded to the request in time, we agree with the Information Commissioner's conclusion that it did. Under FOIA section 17(5) a public authority wishing to rely on section 14 must notify the person making the request of that fact within 20 working days. However, section 17(6) says that this requirement does not apply if the public authority has already given such a notice in relation to a previous request and it would in all the circumstances be unreasonable to expect it to serve a further notice in relation to the current request. It follows from what we have said above that a previous notice had been given in this case and we have concluded that it would not be reasonable to have expected the public authority to have given a further notice, in response to the letter of 16 June 2006, within the statutory time limit.
- 12) For the reasons given above we dismiss the Appeal.

Signed

Chris Ryan

Deputy Chairman

Date: 29th August 2007