

FOIA s.12 – Cost of compliance and appropriate limit

FOIA s.1(1) – Whether information held

Peter Quinn v IC & Home Office

EA/2006/0010

15th November 2006

Cases:

Facts

The Appellant made a request to the Home Office for a copy of the ‘Dunbar Report’ which was the result of an inquiry into a riot at HM Remand Centre, Risley. The report was never fully published, only a summary was made public. An employee of the National Offender Management Service replied stating that the Appellant could have a copy of the summary, but that they were unable to find a copy of ‘the report proper’.

The IC held that the Home Office was not in breach of s.1(1) of the Act as neither the report nor evidence of its destruction could be found by the Home Office. This suggested that the Dunbar Report was not held by the Home Office. Therefore, the IC did not require any remedial steps to be taken.

Findings

Was the Information destroyed?

The Home Office was unable to provide any evidence of the destruction of any of the copies of the report, despite having a system to record file destruction. When a file was destroyed the card at the central registry would be marked as destroyed and retained. This record would mean the whole file contents were destroyed, and did not itemise any documents contained within or attached to the file. If any of the file copies of these reports were destroyed and no record kept the Tribunal observed that this would point to a disregard for the procedures in place at the time.

The Tribunal commented that the IC found that the age of the document made it more probable that it would have been destroyed, but that was not to give sufficient weight to the practices in place at the time, the sensitivity and importance of the document to the issue of handling people on remand and its historical importance.

The Tribunal was not satisfied on a balance of probabilities that each copy of the report that was held by the Home Office has been destroyed.

Did the information still exist but could not be located?

The Tribunal found that this was the most probable course of events. They heard that there are in excess of 250,000 files at the central registry at Branston, they are recorded on a manual card index, hence the possibility of human error was considerable. There was no consistent policy of attaching documents to a file, and no

method of recording on the card index that which is contained in each file. A search of the system boiled down to the educated pursuit of trails suggested by the professional experience of the staff working in the Central Registry. Therefore, the exhaustive search referred to by the NOMS employee in correspondence, was in fact an exhaustive search of the places identified through this process.

The Tribunal suggested that this was a flawed filing system and in light of this the Tribunal found on a balance of probabilities that the failure to trace any of the copies of the Report despite diligent searching was indicative that the original or one or more copies of the report were somewhere within the filing system, but their location was not currently known.

The Meaning of 'held'

The IC argued that 'held' had a restricted meaning which denoted "possession and control", however, the Tribunal found no basis for restricting the meaning of "held" in this way.

The Tribunal regarded the s.12 provision which sets a limit to the cost of searching for information. They stated that there is nothing in the provisions which prevents a public authority (as here) searching beyond the £600 limit, however, if the document cannot be located notwithstanding their best efforts, the s.12 provisions remove from them the obligation of searching any further.

Therefore, in light of the s.12 provisions they were satisfied that s.12 does obviate the need for a restrictive definition of "held", and can be construed in laymen's terms as "have they got it?" implicit in that being that a document is still held even if a public authority cannot find it and do not know where it is likely to be found.

Had the cost limit been reached?

The Tribunal held that if the appropriate cost limit had been reached, the Home Office would be entitled to rely upon it.

The Tribunal was satisfied that the appropriate limit had been reached by the time the Home Office sought to rely upon it. It was also clear from the evidence that substantial time had been expended since in following up other avenues of enquiry in an effort to locate the report.

They were satisfied that the Home Office had undertaken extra searches at the request of the Appellant, and that in light of the applicability of s.12 there was no legal requirement for them to search further.

Conclusion

The Tribunal allowed the appeal and substituted the Decision Notice.