

***Michael Leo Johnson v IC & Ministry of Justice
(formerly the DCA)***

EA/2006/0085

13th July 2007

Cases:

Facts

The Appellant requested information as to: (1) the number of claims allocated to individual Queens Bench Masters between 2001 to 2004; and (2) the number of strike outs of claims by individual Queens Bench Masters between 2001 to 2004. The MoJ said that this information was not “held” by them because it had not previously been compiled.

The IC agreed that the information was not “held”.

Findings

Was the information ‘held’?

The Tribunal noted that the Act does not contain a definition of “held”. They stated that when considering whether information is “held”, the focus must be on the information itself, rather than on where or how it is recorded.

The information requested by the Appellant cannot be obtained from searching the electronic database. Instead it would have to be compiled by going through large numbers of paper files, manually, to identify the number of strike out orders made and the Masters who made them. The MoJ say that the paper files should be viewed as containing the “building blocks” that can be used to generate the information requested, but that the fact that the MoJ hold these “building blocks” does not mean that they actually hold the information requested.

The Tribunal asked themselves whether, if the MoJ have to do something with the building blocks, does this mean that they do not hold the information? They concluded that the answer lies in the extent to which something needs to be done. In this case, the steps needed to get from the “building blocks” to the information requested were relatively simple. The fact that steps are needed does not mean that the information requested is not held. Although the request involved information contained in thousands of files, this did not detract from the above principle (although it may raise section 12 issues). The Tribunal stated that the extent of skill and judgement that has to be deployed to meet a request may have bearing on the question of whether information is “held”. In this case, however, the level of skill and judgement was minimal and had no material bearing on what was essentially a simple (albeit time consuming) exercise of going through the individual files to identify the number of strike out orders made and the Masters who made them.

The Tribunal concluded that the information was ‘held’ for these reasons.

Would complying with the request exceed the limits in s.12?

The Tribunal noted that s.12 does not provide an exemption; rather, its effect is to render inapplicable the general right of access to information contained in s.1.

The MoJ had carried out a sample exercise to show that going through the 17,642 files in issue, manually, would take one employee over 1,470 hours or 40 weeks. At £25 per hour, the task would cost nearly £37,000, far exceeding the limits in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

The Tribunal held that the time should not be calculated as if a person undertaking the task would function at a consistent or optimal level of efficiency throughout the exercise. However, it was not necessary to make a finding as to the exact length of time that would be required per file, because even if the time required was a tenth of the MoJ’s estimate, it would still far exceed the cost limits.

They stated that the cost limits apply to the entirety of the request, not to individual elements that comprise the request. Also, the cost limits do not mean that the request must be complied with up to the point at which the limit has been reached. However, if the MoJ could comply with part of the Appellant’s request within the cost limits, it may have an obligation under section 16 to see if the Appellant wished to re-define his request accordingly. In this case, it would not have been possible to delineate the request in a way that would have been acceptable to the Appellant and still be within the cost limits.

Therefore, the Tribunal held that pursuant to section 12, the MoJ was not obliged to comply with the Appellant’s request.

Conclusion

The Tribunal allowed the appeal to the extent that it found that the DCA did hold the requested information. However, it found that the DCA was not required to comply with the Appellant’s request because the costs of doing so would exceed the limits under section 12.