



Neutral Citation Number:

IN THE FIRST-TIER TRIBUNAL **Appeal No: EA/2015/0288**
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50585724
Dated: 16 November 2015

Appellant: Andy Mabbett

Respondent: The Information Commissioner

Heard at: Birmingham Employment Tribunal

Date of Hearing: 6 July 2016

Before

Chris Hughes

Judge

and

Michael Hake and John Randall

Tribunal Members

Date of Decision: 12 July 2016

Attendances:

For the Appellant: in person

For the Respondent: no attendance

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 16 November 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. On 16 February 2015 the Appellant in these proceedings, Mr Mabbutt, asked the West Midlands Fire and Rescue Service (WMFRS):

“Please can you supply me with a list of the locations of all the Fire Hydrants within your administrative area.

Please could you also include canal access hatches, if you still maintain these. If so, please indicate which is which, or provide two separate files.

I would like to know the exact location (longitude & latitude) if known, or if that is not held I would like the nearest street address.”

2. WMFRS resisted the request relying on the exemption in s24(1) FOIA, national security and s31(2) prejudice to law enforcement (it later relied on s38(1) endangerment of health and safety). Mr Mabbutt complained to the Respondent Information Commissioner (“ICO”) who following an investigation ordered the disclosure of the canal hatch information but upheld the reliance of WMFRS’s on s24(1) to withhold information about fire hydrants.

The decision notice

3. The ICO concluded that the withholding of the information was reasonably necessary for national security and a listing of hydrants and their locations would assist in the planning of an attack by poisoning on water supply infrastructure by identifying access points (dn paragraph 11-13). Such an attack on the infrastructure would be in the domain of national security. While hydrants are visible a comprehensive list of the precise location of every hydrant would place in the public domain more information than is available through hydrants being visible. WMFS supplied a list of attacks and attempted attacks on water supplies (DN paragraph 15, document at

bundle pages 61-76, list at page 63). The ICO considered that such an attack was plausible.

4. In considering the balance of public interest (dn paragraphs 21-24) the ICO did not consider that there were any weighty factors in favour of disclosure, and recognised the inherent weight and significance of national security as a matter of fundamental public interest he therefore concluded that the location of the hydrants should not be disclosed.

The Appeal

5. Mr Mabbett appealed against the decision. He argued that similar information had been released in the past, that high pressure water hydrants could not be used to inject poison into the water supply and that information was already in the public domain since hydrants were visible.
6. In resisting the appeal the ICO relied on the decision notice. He contended that even if similar material had been released for other locations this did not preclude the application of s24(1) in this case. He noted the current threat of terrorist attack and remained satisfied that the possibility of an attack via fire hydrants was plausible and that since a complete list of hydrants was not available the disclosure would add to the information in the public domain.

Issues

7. The two issues for the tribunal to decide were first whether the information was exempt information in that exemption from the duty to disclose was required for the purposes of national security and secondly, if so, where did the balance of public interest lie between disclosure and non-disclosure.
8. Mr Mabbett doubted the credibility of the information provided to the ICO which included an article by an author which did not indicate the author's credentials; although he acknowledged that the author had written a book on the subject. He considered that there was no evidence of a terrorist attack through a fire hydrant and that it amounted to "mere supposition and very little of that". He felt that the request was very similar to a request he had made to the Derbyshire Fire and Rescue Service, which had, having relied on s24, then consulted the Centre for the Protection of National Infrastructure and reversed its position. No harm had come from the disclosure of this and similar information. He questioned the expertise of the

WMFRS and ICO in coming to a decision contrary to the expert body. He did not consider the finding with respect to national security reasonable.

9. He explained that he was part of an open information group – openstreetmap which could be described as a “Wikipedia of maps” producing a freely available map of the world maintained by volunteers. The information requested would be fed into the map. In addition to the principle of open information he identified a number of public benefits from disclosure of the information: it would enable the public to hold to account those responsible for the maintenance of the hydrants as well as enabling them to assist by reporting vandalism, it would assist those members of the public who prefer to buy houses near a fire hydrant and it would assist builders and others who need access to the water supply from hydrants when carrying out works.

Consideration

10. The tribunal noted that while on Mr Mabbett’s account the Centre for the Protection of National Infrastructure had concluded that a similar request in a different area did not give rise to considerations of national security, WMFRS had consulted the West Midlands Counter Terrorism Unit which confirmed the view that WMFRS had taken of the national security implications (bundle page 77). Although this view may have differed from the view of the other agency, that related to a different area that might have a different susceptibility to terrorist attack; furthermore it is entirely proper for two different expert bodies in this complex and uncertain area to come to different conclusions. The tribunal, having reviewed the article “Securing Our Water Supply, Protecting a Vulnerable Resource”, were satisfied that it provided significant indications of potential threats to the water supply system and in the light of the views of the Counter Terrorism Unit and the information in the article it was reasonable to conclude that the information requested would be of assistance in carrying out an attack on the water supply infrastructure. The tribunal noted, in particular, that the article described, contrary to Mr Mabbett’s view, how contaminants could be introduced via a hydrant. The tribunal was satisfied that s24(1) was engaged by this request for information.
11. The tribunal was further satisfied that, while Mr Mabbett had identified public interests served by disclosure, the public interest in protecting national security in this case substantially outweighed the public interest in disclosure.

12. The tribunal was therefore satisfied that the decision of the ICO was correct in law and upheld that decision. The appeal is dismissed.

13. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 12 July 2016