



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2016/0047

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50585752

Dated: 22 February 2016

Appellant: Faisal Qureshi

**Respondents: (1) The Information Commissioner
(2) The Home Office**

On the papers

**Before
HH Judge Shanks
and
Paul Taylor and Jean Nelson**

Date of decision: 21 July 2016

Date of promulgation: 22 July 2016

Subject matter:

Freedom of Information Act 2000 (FOIA)

Section 1(1)(a) (Duty to confirm or deny whether public authority holds information)

Section 23(5) (Information supplied by, or relating to, bodies dealing with security matters)

Section 27(4) (International relations)

Section 31(3) (Law enforcement)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal allows the appeal and issues the following substitute decision notice.

SUBSTITUTE DECISION NOTICE

Public Authority: **The Home Office**

Complainant: **Faisal Qureshi**

Decision

For the reasons set out below the Public Authority was not entitled to rely on section 23(5), 27(4) or 31(3) of FOIA to refuse to confirm or deny whether it held documents concerning a possible extradition request and arrest warrant in relation to Elaine Antoinette Parent in response to the Complainant's request dated 30 April 2015.

Action Required

The Public Authority must by 2 September 2016:

- (a) inform the Complainant whether or not it held such documents, and
- (b) if so, supply them to the Complainant and/or serve on him a suitable notice under section 17 of FOIA.

HH Judge Shanks

21 July 2016

REASONS FOR DECISION

Factual background

1. In July 1990 the body of a brutally murdered woman was found in St Lucie County in Florida. The suspected murderer was Elaine Antoinette Parent, an elusive conwoman nicknamed “the Chameleon Killer”, who was believed to have connections with this country and to have flown here shortly after the murder and lived here under an assumed name in the 1990s. We have seen evidence that the Metropolitan Police were in touch with the Office of the State Attorney in Florida during the 1990s about the case. There is no dispute that Ms Parent shot herself dead in Florida in April 2002 in the course of being arrested.
2. The Appellant, Mr Qureshi, is a journalist researching Ms Parent’s life. On 30 April 2015 he made a request to the Home Office under FOIA for “... documents concerning a possible extradition request and arrest warrant that may have been issued for [Ms Parent] from Florida law enforcement.” The Home Office responded on 19 May 2015 by refusing to confirm or deny whether it held such documents relying on sections 23(5) and 27(4) of FOIA. In relation to section 23 they mentioned the National Crime Agency (NCA) and the Serious Organised Crime Agency (SOCA) as relevant security bodies.
3. Following an internal review by the Home Office, Mr Qureshi complained to the Information Commissioner. In a Decision Notice dated 22 February 2016 he decided that the Home Office were entitled to rely on section 23(5) but did not consider section 27(4). Mr Qureshi has appealed against the Decision Notice.

Issues on the appeal

4. The Home Office have been joined as a party to the appeal. They now seek to rely not only on sections 23(5) and 27(4) but also 31(3) of FOIA. We must therefore consider each of these exceptions to “the duty to confirm or deny” laid down by section 1(1)(a) of FOIA in the light of all the material now before us, in particular the Home Office’s Response dated 12 May 2016.

5. Before turning to them we note an authority to which the Home Office helpfully drew our attention, *R (on the application of Ali Manzarpour) v Secretary of State for the Home Department* [2014] EWHC 1086 (Admin). At para [10] of the decision in that case Burton J said this:

The [Home Office] relies heavily upon a blanket policy, which is set out in Hansard in the text of a Parliamentary answer by the Minister of State at the Home Office, Lord Lenley, on 1 May 2012, but which is said to have been in place for at least ten years, namely:-

As a matter of longstanding policy and practice, we will neither confirm nor deny whether an extradition request has been made or received until such time as a person is arrested in relation to the request, so that people do not have the opportunity to escape justice by leaving the country before they are arrested.

It is plain that the UK Government is entitled, in the exercise of prerogative or common law powers, to have a blanket policy... and the justification for the policy is summarised in the Parliamentary Answer. If an affirmative answer is given to such a question, then the opportunity is being given to a person whose extradition has been requested by a friendly state, to evade or frustrate that extradition request, in breach of the UK Government’s international obligations. Unless the same answer – neither confirm nor deny (NCND) – is given in every case then an inference will inevitably be drawn by the questioner in a given case from a refusal to answer.

Section 23(5) (security)

6. Section 23(5) provides:

The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any

information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

Subsection (3) lists, among others, SOCA, NCA and the National Criminal Intelligence Service (NCIS), which the Home Office have also sought to rely on in the course of the appeal.

7. The Home Office's case on section 23(5) is that confirming or denying whether they held relevant documents would have involved disclosing information related to one or more of these bodies, because of their potential involvement in the extradition and arrest warrant process. The Home Office say that all three bodies had involvement in international law enforcement co-operation between the UK and the USA, that they each "housed" the UK National Central Bureau of Interpol, through which police-to-police enquiries are directed in order to establish a fugitive's whereabouts and that, although extradition requests are made through diplomatic channels, they are often based on information gathered via those bodies.

8. We agree with the Information Commissioner that there has to be at least a realistic possibility that the relevant security body was involved in a case before it can be said that disclosing whether or not there was an extradition request in that case can be said to involve the disclosure of information related to the security body. If there was no such requirement the existence or non-existence of *any* request for extradition would be covered by section 23(5); indeed, the existence or non-existence of any information related to any kind of activity in which security bodies ever get involved would be covered by the section: that cannot be right.

9. A simple investigation of relevant statutory material by the Tribunal indicates that SOCA was established in 2006 and that the NCA was established in 2013. Information confirming or denying the existence of a putative extradition request made in respect of someone who died in 2002 could not

therefore on any view possibly disclose any information which related to either of those two bodies. That conclusion means that the only possible relevant security body is the NCIS. It also serves rather to undermine our confidence in the case being put forward by the Home Office on this point and to cause us to scrutinise the case in relation to the NCIS with care.

10. We therefore ask ourselves whether there was a realistic possibility that the NCIS was involved in the Parent case. On the material before us we are not so satisfied for the following reasons:

- (1) we have looked at various NCIS (Secretary of State's Objectives) Orders made in 1998, 1999 and 2002 (SIs 1998/110, 1999/822, and 2002/778): it is clear that the statutory remit of the organisation was to provide criminal intelligence on serious and organised transnational crime affecting the UK in areas like drug smuggling and people trafficking; although Ms Parent may have been involved in some serious crime, there is no indication that she was involved in anything of that sort;
- (2) there is evidence before us obtained by Mr Qureshi that the Metropolitan Police and the State Attorney in Florida were the bodies who were concerned with her case in the UK and the US respectively;
- (3) the Commissioner says that it was reported that the FBI were involved in the case; the only evidence of this we have seen is an internal record showing the FBI administratively closing the case in 1999 but, in any event, it seems pretty clear that their involvement would have arisen because Ms Parent was a murder suspect who was a fugitive from the Florida justice system and would not indicate anything more than this;
- (4) the Home Office say that the NCIS "housed" the UK National Central Bureau of Interpol, through which police-to-police enquiries on a fugitive's whereabouts are directed; apart from the fact that it appears that in this case enquiries were made direct to the

Metropolitan Police and that we are not clear what is really meant by the word “housed” in this context, it seems to us that in any event it would provide far too tenuous a link between the NCIS and the case for it to be said that the disclosure of the existence or otherwise of an extradition request would involve the disclosure of information related to the NCIS;

(5) the Home Office could have sought to put specific evidence before us on the point (no doubt on a closed basis) but they have not done so.

11. We are therefore of the view that the Home Office was not entitled to rely on section 23(5) in this case.

Section 31(3) (Law enforcement)

12. Section 31(3) provides:

The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice [the prevention or detection of crime or the apprehension or prosecution of offenders]

13. We can deal with this very shortly. While of course the disclosure of the existence of an extradition request is likely to prejudice the apprehension and prosecution of a living fugitive (and therefore the prevention and detection of crime) as acknowledged in the *Manzapour* case, the same cannot possibly be said in relation to someone who is dead. The section simply cannot apply in this case where the request was made 13 years after Ms Parent killed herself.

Section 27(4) (Intentional relations)

14. In so far as relevant section 27(4) says this:

The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) –

(a) would, or would be likely to, prejudice [relations between the UK and any other State], or

(b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom ...

By virtue of section 2(1)(b) the provision only bites if in all the circumstances the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.

15. The Home Office says, and we accept, that the making of an extradition request is always a confidential matter between the State concerned and the UK and that to confirm or deny the existence of such a request will inevitably involve the disclosure of that confidential information: we therefore agree that section 27(4)(b) applies, subject to the public interest test. In relation to section 27(4)(a) the Home Office also say that disclosure of such a confidential matter would (or at the very least would be likely to) prejudice relations between the UK and the State concerned. It is noteworthy that they say nothing in this connection which is specific to the circumstances of this case or even to the USA and we are not at all sure that they have established the application of section 27(4)(a) in this particular case. However, given our conclusion on section 27(4)(b), we turn to consider the public interest balance overall arising under section 27(4).

16. So far as the public interest in disclosing whether there was an extradition request is concerned, the Home Office suggests that the Parent case is of little public interest in itself, particularly since she is now dead. Having seen the press reports provided to us with the papers we would strongly disagree with that assessment. We consider the story is an extraordinary one and one in which the public can take a legitimate interest and we have no reason to think that Mr Qureshi is other than a responsible journalist pursuing a proper story. The steps taken by the authorities in this country and the USA are part

of that story and we consider that there is a substantial public interest in their disclosure.

17. So far as the public interest in maintaining the section 27(4) exclusion is concerned, we note again that the Home Office have not sought to put before us any evidence specific to this case or to the position of the USA. We note that the confidentiality of any extradition request inevitably and necessarily ceases when a fugitive is arrested and note again that the death of Ms Parent would appear to substantially remove the rationale for maintaining that confidentiality. And we note that Mr Qureshi has apparently been able to obtain documents from the State of Florida and the FBI relating to the case which would tend to indicate that the American authorities may have a more relaxed approach than our own to a case like this.

18. Taking account of all the circumstances of the case we are satisfied that the public interest in disclosure substantially outweighed that in maintaining the exclusion of the duty to confirm or deny in section 27(4) and that the Home Office were not therefore entitled to rely on that section.

Conclusion

19. We therefore conclude that the Home Office ought to have complied with section 1(1)(a) in this case. In view of the time of year we will give them six working weeks to comply with that section and, if they hold the requested information, to supply it and/or serve a suitable notice under section 17.

20. This is a unanimous decision.

HH Judge Shanks

21 July 2016