



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

**Appeal No: EA/2016/0222**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50625071**

**Dated: 24 August 2016**

**Appellant: John Butcher**

**Respondent: The Information Commissioner**

**Heard at: Residential Property Tribunal, 10 Alfred Place, London, WC1E  
7LR**

**Date of Hearing: 6 February 2017**

**Before**

**Chris Hughes**

**Judge**

**and**

**Roger Creedon and David Wilkinson**

**Tribunal Members**

**Date of Decision: 18 February 2017**

**Date Decision Promulgated: 20 February 2017**

**Attendances:**

**For the Appellant: in person**

**For the Respondent: no attendance**

**Subject matter:**

**Freedom of Information Act 2000**

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

**Appeal No: EA/2016/0222**

**SUBSTITUTED DECISION NOTICE**

**Dated: 18 February 2017**

**Public authority: Ministry of Justice**

Address of Public authority: 102 Petty France, London, SW1H 9AJ

**Name of Complainant: John Butcher**

**The Substituted Decision**

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 24 August 2016.

"The Ministry of Justice respond to the Appellant's amended request for:

4.2 the approximate number of letters that were addressed to that Secretary of State and that were received through the general post at that address [102 Petty France] in the month of September 2015 (or, if such information is not available for that period, for another period of no lesser length, that ended later)

4.3 the number of instances that there have been of the ministry receiving complaints from correspondents that, after five weeks have elapsed since the correspondent sent a letter so addressed through the general post in the period to which the response to paragraph 4.2 above relates, no reply was received,

4.5 the steps in place to monitor the handling of the ministry's inwards mail, to ensure that all letters are properly dealt with, that all replies are properly dispatched through the general post and that all complaints per paragraph 4,3 above are investigated independently of the staff involved with such handling,

4.6 if the ratio of complaints per paragraph 4.3 above to letters per paragraph 4.2 above is more than 1:10,000, details of steps taken by the ministry with the Royal Mail to ascertain if such letters were "lost" in the post, and with what outcome"

Dated this 18th day of February 2017

Judge Hughes

## REASONS FOR DECISION

### Introduction

1. The Appellant in these proceedings has been in correspondence with the Ministry of Justice (MoJ). He has been concerned about aspects of the administration of justice including the process of making claims arising out of accidents through the claims portal. In order to make a claim it is necessary to agree to the terms of use associated with the portal and he is concerned at the implications of this. He raised the question with civil servants and, dissatisfied with the response at civil servant level pursued the issue (through MPs) with Ministers.
2. He wrote, on 23 September 2015, to the Secretary of State and did not receive a reply. He followed this up and on 3 November he wrote to his MP making a complaint about the MoJ (bundle pages 62/3). This communication queried whether his MP (a Minister in the department) ought to lodge a complaint (paragraph 1), set out the circumstances of the posting of the letter (paragraph 2), his hypothesis of how it was handled suggesting that it had received special treatment since it came from the Appellant (paragraph 3):-

*“That letter has not been returned to me as undelivered and I have received no response to it – not even the courtesy of an acknowledgement, in writing or by telephone, of its receipt. So I consider it likely that it was received at that address and so would have been passed to the ministry’s correspondence unit. I am concerned that it was handled as follows:*

*3.1 As the ministry’s computer system records my name and address as requiring any letter from me to receive “special attention”, it was not logged in as normal, but was promptly passed to the relevant section of the ministry for early advice as to how it should be handled, with my “special status” being noted,*

*3.2 The advice from the section was that:-*

*(a) my letter raises important issues that could cause embarrassment to ministers and/or officials and/or the judiciary, and/or*

*(b) my letter required changes that could cause inconvenience to the “legal process” and or the insurance industry, and/or a cost to public expenditure.*

3.3 *My letter and that advice were passed to a senior official, who decided, possibly also for other reasons, that it would be appropriate for my letter to be ignored and that no response should be sent to me; so no reply was sent to me.*"

3. It continued in paragraph 4:-

*"If the Ministry contends that my letter was never received and denies that any of the steps described in paragraph 3 above could have been taken, I wish to receive in writing a letter (by fax to my above number) containing such a contention and such a denial, and signed by an Assistant Secretary or above, or by a minister, and containing a statement:*

*4.1 that the ministry had at the material time, and still has, no arrangements for handling inwards mail in the way that I have indicated,*

4. , a number of questions and requests for information (paragraph 4) and a request for any reply which had (hypothetically) been sent (paragraph 5).

5. On 14 December 2015 a Minister sent a reply to the complaint. This addressed the issue raised in paragraph 1, stated that the letter had not been received and replied to paragraph 3 stating:-

*"On behalf of MoJ I am very sorry that Mr Butcher's letter of 23 September was not received by the department. I can also confirm that none of his correspondence is subject to any special handling advice and neither has any advice been sought. Letters from correspondents and constituents are handled in the same way, regardless of the whether the writer agrees or disagrees with departmental policy. The process for handling correspondence at MoJ follows guidance from Cabinet Office, which can be found online at the following link.....*

*If Mr Butcher is able to send another copy of his original letter to the Head of the Ministerial Correspondence Unit, Mandy Godridge, she will make sure that you receive a prompt reply....*

*Mr Butcher has raised several questions in his letter dated 3 November, some of which are covered by the Freedom of Information Act. These questions will be answered separately by officials and I have asked that Mr Butcher receives a response as soon as possible. Once again, please accept my apologies for any frustration caused to Mr Butcher."*

6. The MoJ subsequently received the further copy of the letter and responded to it.

The request for information

7. Paragraph 4 of the letter is that part which was treated as a request for information under FOIA. It commences with the request for a statement as to the handling of his correspondence and then seeks details of correspondence levels and complaints about correspondence:-

*“4.1 That the Ministry had at the material time, and still has, no arrangements for handling inwards mail in the way I have indicated*

*4.2 the approximate number of letters that were addressed to that Secretary of State and that were received through the general post at that address in the three months ended 30 September 2015 (or, if such information is not available for that period, for another period of no lesser length, that ended later)*

*4.3 the number of instances that there have been of the ministry receiving complaints from correspondents that, after five weeks have elapsed since the correspondent sent a letter so addressed through the general post in the period to which the response to paragraph 4.2 above relates, no reply was received*

*4.4 the number of instances that there have been of a reply to such a letter having been sent through the general post, but the addressee contending that it was not received after two weeks of it being so posted*

*4.5 the steps in place to monitor the handling of the Ministry's inwards mail, to ensure that all letters are properly dealt with, that all replies are properly dispatched through the general post and that all complaints per paragraphs 4.3 and 4.4 above are investigated independently of the staff involved with such handling*

*4.6 if the ratio of complaints per paragraph 4.3 above to letters per paragraph 4.2 above is more than 1:20,000, details of the steps taken by the Ministry with the Royal Mail to ascertain if such letters were 'lost' in the post, and with what outcome*

*4.7 if the ratio of instances per paragraph 4.4 above of letters so 'lost' to letters so sent is more than 1:20,000, of what steps have been taken by the Ministry with the Royal Mail to ascertain if letters so sent were 'lost', and with what outcome”*

8. The MoJ responded on 13 January 2016 (bundle page 65-66 repeated at 140-1) refusing to answer 4.2-4.4 on the basis that the time required to gather the information

from across the whole of MoJ and its agencies would exceed the costs limit provided by section 12(1) of £600. The reply suggested:-

*“... you are of course welcome to submit a refined request, you may wish to consider narrowing the time period significantly, and specifying correspondence received by a particular area of the department”*

9. On 28 January 2016 the Appellant sent a three page letter to the MoJ raising various issues, clarifying and restricting the request and pointing out (at point 5 on page 2) that:- *“the MoJ make no reference to my having made clear, in paragraphs 2.3 and 3 of that letter, that such information only related to letters addressed to the MoJ at 102 Petty France.”* He requested an internal review which the MoJ did not carry out. He complained to the Respondent who conducted an investigation. She found that 4.1 was not a valid request for information, the other points were, she upheld the MoJ’s reliance on section 12 (costs with respect to 4.2-4.4 and directed it to respond to point 4.5-4.7. She criticised the MoJ for its handling of the request.
10. The appellant challenged this pointing out that the Respondent had failed to consider the narrowing of the scope of the request contained in his letter of 28 January and raising other issues.
11. In her reply the Respondent acknowledged that:- *“regrettably the second page of the Appellant’s letter to the MoJ dated 28 January was, in error, not scanned onto the Commissioner’s case management system. Unfortunately the Commissioner therefore only considered the first and third pages of this correspondence.”* She proposed that a substituted decision notice be issued. With respect to request 4.1 she continued to maintain that it was not a proper request within FOIA.
12. In the hearing the Appellant agreed that the substituted decision notice was the way forward and that the only substantive matter which the Tribunal could address was the request in 4.1.
13. The Tribunal accepted the agreement of the parties with respect to the substituted decision notice and considered the request in 4.1 in the round. The Tribunal noted the Appellant’s arguments and reasoning why there should be a special mechanism for handling his correspondence – in his view he raises matters of constitutional significance which are a significant embarrassment to ministers and in particular his linguistic analysis of the sentence in the letter from the Minister (paragraph 5 above)

*“I can also confirm that none of his correspondence is subject to any special handling advice and neither has any advice been sought.”* He drew attention to the specific wording *“special handling advice”* and contrasted it with his letter which referred to *“special attention”*.

14. The Tribunal could not accept that there was some form of subtle equivocation embedded in this response. The letter from the Minister was an apology for the lost letter and confirmation that nothing untoward, beyond a lost letter, had occurred. The drafting of the response was no doubt influenced by the words used in the letter of complaint. Whether or not 4.1 was a valid request within FOIA the Appellant had received a full and proper answer to the question and there were no substantial grounds for thinking that the answer was incorrect. To that extent therefore the Tribunal dismissed the appeal; the substantial issue of the remainder of the request, in the form modified by the letter of 28 January 2016, is now for the MoJ to deal with in the terms of the substituted decision notice.

15. Our decision is unanimous

Judge Hughes

Date: 18 February 2017.

