



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice IC-44641-T2B4**

Appeal Reference: EA/2020/0331

**Heard via CVP platform
On 16 April 2021**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

SUZANNE COSGRAVE & JEAN NELSON

Between

WILLIAM HUGHES

Appellant

and

INFORMATION COMMISSIONER

Respondent

**Representation
Appellant: in person
Respondent: did not appear**

DECISION

The appeal is dismissed

REASONS

Background

1. This request for information arose out of a long-running dispute which Mr Hughes had with a neighbour who had been harassing him and his wife. His

solicitor was in contact with the Bailiff Manager who wrote to the solicitor on December 7 2018:-

"I write with reference to the below warrant and the difficulties the court have encountered in executing this warrant.

As you are aware there have been quite a number of visits to the address at various times by different bailiffs to attempt to execute the warrant. All attempts have met with no result and no response from the defendant. I have overseen this case and visited myself on a number of occasions. As it did not seem likely that the court would be able execute this warrant we considered passing the warrant to the local police.

Experience tells us there is a reluctance from the police to prioritise this kind of process and it is not a standard practice for the court to pass these to the police.

In order to progress this matter I spoke and met with the local police and have had the warrant passed to the local officer for that area.

I set myself a period of 3 weeks before asking for the warrant to be returned to the bailiff department in order for my team to continue to attempt execution of the warrant. This is in my experience good practice as there can be a tendency for the warrant to become stagnant with no progress.

I shall have the warrant back in my department on Monday 10th December 2018.

I will then attempt further visits and update you within two weeks."

2. In the light of the continuing expense of instructing a solicitor and on the prompting of the solicitor that there were now no legal issues in the proceedings, the Hughes's took over the conduct of the case and on 10 December 2018 his wife wrote to the Bailiff Manager for the area setting out the history of the litigation:-

"A brief synopsis of the case is

Jan 2011 Litigation for harassment began.

Nov 2011 Aborted trial.

Apr 2012 Adjournment of trial granted.

Nov 2012 D1 admits harassment agrees costs and damages.

Dec 2012 Trial took place against D2.

Aug 2013 Judgement in my favour - Court ordered to cease harassment , cost's and damages awarded.

Aug 2015 Costings Court agrees costs and damages. Charges against D1 and D2 property secured.

July 2017 D1 and D2 divorce. Property sold charges released.

Sep 2017 Determination in court began. To recover outstanding debt. (Approx to date £180.000)

Approx Mar 2018 Court satisfied that D2 is purposefully avoiding service of court papers - Substituted service accepted by the court.

Apr 2018 Defendant did not attend court or have representation. High Court Judge [redacted] orders suspended sentence of 14 days imprisonment upon the defendant's appearance on the 20th June 2018.

June 2018 Defendant did not attend court or have representation. Court ordered that the sentence of 14 days imprisonment should be served. The defendant must then bring to the court all financial information that the court has ordered.

June 2018 Contact made with [officials] and through my solicitors with yourself.

Dec 2018 We are now 6 months on from the hearing and for all intent and purposes we are no further progressed We are now 6 months on from the hearing and for all intent and purposes we are no further progressed . I have spoken and have been in constant touch with [my solicitor] and he advised me that this case had been elevated to the police. I have spoken over the previous 3 weeks to P.C.[name redacted] at Cheshire Police and he advised me that nothing is on their computer system. (the last visit was Saturday Dec 8th) As a matter of urgency would you please forward me

1. The persons name & rank to whom you spoke to when you had, as described to me, "high level " talks with the police.

2. The email sent to the police requesting their assistance in this matter.

3. The Bailiff Manager replied promptly:-

"As you may be aware a great deal of court time has been spent attempting to progress this matter. This has included visits by both the local court bailiff and myself. To date there has been no success with this and the defendant has remained elusive. There is currently a committal warrant in force.

It is not the practice to pass these matters on to the police however at the insistence of your solicitor I did meet with the police and asked as a favour if they would attempt execution of the warrant. The powers of the police are no different to that of the court bailiff un these matters save a police officer may be able to call at different times.

This was given by me to the local police team as a gesture of help. I do not wish to provide details of this as I would not want to compromise the officer who kindly assisted me. Also I would not reproduce internal e mails in the way you have requested.

I am aware that there has still been no success with the execution of the warrant so have returned the warrant back to my team to enforce.

Please be aware this situation is not un common and all bailiff departments experience difficulties when the defendant does not cooperate or is elusive. The court offers no guarantee that the warrant can be executed.

As things stand my team are still attempting to execute this warrant and I will inform you of any developments as they occur.

In conclusion I am aware of how frustrating these matters can be but myself and my team have to work within the law and guidelines which govern these matters. I can give you an assurance that myself and my team will do everything we can to progress this matter."

4. In an email from his wife's account Mr Hughes then asked for the name of his manager which he supplied on 13 December. There was further contact with that manager. On 29 January 2019 Mr Hughes was informed that the warrant had been discharged as unenforceable. There was correspondence and a complaint was made and escalated. Detailed letters were sent to Mr Hughes from officials in the court on 5 March 2019 and 5 April 2019 explaining in some detail what the Bailiff Manager had done, that the failure of D2 to attend court was a civil not a criminal matter, that the head bailiff had made considerable efforts to effect service, that he had spoken to a passing police officer to see if the presence of a uniformed officer would encourage D2 to come to the door and the officer had offered to contact him if he saw D2, that it was an informal arrangement and there was no need to obtain the officer's details. The letter explicitly stated:-

"I find the content of [Bailiff Manager] email to your solicitor on 7 December 2018 misleading and I apologise for this. [Bailiff Manager] has explained to me in discussion with your solicitor, who had spoken to [head bailiff] about your requests to your solicitor to involve the police, he was persuaded to consider this, but as this is not a police matter and he had already spoken with a police officer on 3 December 2018 when approached, made the arrangement for them to provide any fresh evidence regarding the occupancy of the property... wat is not misleading is that the Police were involved to this extent, [Bailiff Manager] did await a while and after not hearing from the Police had to return the warrant as failure to execute on debtor. Anything which might be misleading has, however, had no bearing on the service of this process

...

While the statement about internal e-mails was made I can confirm there are no internal e-mails relating to this incident.

...

I ask you to reflect that if [Bailiff Manager] had determined the bailiff had made enough attempts to meet the debtor at the premises and returned the warrant to the office unserved at that stage, he would not have come into contact with the passing Police patrol and would not have made the arrangement he did with the police, and come under such intense scrutiny on an unusual arrangement..."

5. Mr Hughes complained to MOJ centrally and in a final reply of 22 May did not uphold Mr Hughes's complaints. He sought the assistance of the Parliamentary and Health Services Ombudsman, the Ombudsman indicated that they were not able to help.

The request for information

6. On 12 September 2019 Mr Hughes wrote to the Ministry of Justice (MOJ) seeking information:-

1. *The name of the senior police officer the [Bailiff Manager] met to discuss this case, as reported in [name redacted] email to my solicitor dated 8 November 2018.*
2. *The name of the Local Beat Officer that [Bailiff Manager] was meeting to assist him as reported in [name redacted] email dated 7 Dec 2018.*
3. *The evidence/information provided by [name redacted] that H.H.J. [judge's name redacted] relied upon to come to her decision to discharge the case against D2."*

4. Following an exchange in which he provided details of the original litigation Mr Hughes clarified what he was seeking:-

"Section 1 and 2 of my Freedom of Information request is seeking the information within the communications directly attributable to the [Bailiff Manager], in correspondence with the police.

Section 3 requests the correspondence and information relied on by HHJ [judge's name redacted] given by [Bailiff Manager] for consideration."

5. On 12 December 2019 the MOJ replied confirming that it held no material within the scope of the request and there was no correspondence between the bailiff and the police or between the bailiff and the judge.
6. Mr Hughes complained to the Information Commissioner claiming that he had nothing but obfuscation from MOJ and set out his view of the issues:-

"in the process of submitting evidence to the court for {the judge}'s direction and in correspondence to both my solicitor and myself did [Bailiff Manager] fail in his duties and responsibilities to adequately and properly record evidence in his communications with the police and the courts or has [the bailiff] fabricated evidence and been untruthful?

If [Bailiff Manager] has been untruthful then possibly no contact was made with the police

If [Bailiff Manager] did make contact with the police then firm evidence of names of Police Officers are required and what was written by [Bailiff Manager] in his submission to judge [name redacted] for her direction."

7. The Information Commissioner reminded Mr Hughes that her role was limited to determining whether any recorded information is held, on the civil standard of the 'balance of probabilities' relevant to the request; her role was not to consider whether any individual has failed in their duties or fabricated evidence. She was informed by the MOJ that the team that handled this FOI request had confirmed there was no written report between the bailiff and the judge and that a conversation did take place between the two, prior to the Judge's decision. In her decision notice the Information Commissioner stated:-

"26. In relation to the searches undertaken for all parts of the request, the MOJ said that HMCTS had asked the named bailiff to carry out a search of his emails and other correspondence. It said that any electronic data would have been held on the named bailiff's email account and that such searches were carried out. Search terms included the name of the judge, the complainant's name and a timeframe search from November to December 2019.

27. The MOJ said that, if the information were held, it would be held electronically and held on the individual's work email account. It stated that no information had been held that was deleted or destroyed, and that there are no business or statutory reasons for the information to be held."

8. The MOJ also explained that:-

"Although a meeting or conversation may have occurred, we cannot confirm anything that may or may not have been said. This is because nothing was recorded and therefore it would not meet the definition set out in section 84 of the Freedom of Information Act 2000, which defines 'information' as 'information recorded in any form'."

9. The Information Commissioner concluded that no recorded information was held.

The appeal

10. In his appeal Mr Hughes emphasised that he wanted to know the name of the senior police officer and the PC that the bailiff manager had had dealings with and the report prepared for the judge. He argued that it was unlikely that information would be provided to the judge in a conversation, that such information could be held in a court record, that the information could have been deleted in January 2019. He further advanced the possibility that either the bailiff manager did not contact the police or did not keep adequate records.

11. In resisting the appeal the Information Commissioner emphasised that sufficient searches were carried out and that if information was passed in a conversation it would not be recorded. If information was held in court records then it was not disclosable under FOIA but Mr Hughes as a party to the litigation could apply under the court rules to access it. If information had been deleted in January 2019 it was before the request was made, a request for information is for information held at the time of the request and therefore the information would not be held. She noted that in the event that either of the possibilities suggested by Mr Hughes were true, then it would result in information not being held.

12. In his oral presentation emphasised the stress that the conduct which led to the litigation had caused to him and his wife. He was concerned that the judge might have made a decision based on inadequate information. He reviewed

what he had been told and expressed the view that “I am of the belief that [bailiff manager] did not meet the police. He thought the individual was unreliable “either he did not have meetings or did not record them”. He had made an FOIA request to the police and had not found any record of the police assisting a bailiff on 3 December 2018. He indicated that D2 had been made bankrupt in November 2019 and had come out of bankruptcy in 2020, he indicated that “they found no assets”.

13. In a written comment accompanying material he submitted to the tribunal he noted that while he had supplied emails to and from the bailiff manager, the MOJ had not and he concluded:-

“Reviewing this evidence, on the grounds of probability, no contact was made between [bailiff manager] and the police and therefore no information / evidence could have been submitted by [bailiff manager]”

Consideration

14. The role of this tribunal is to consider whether or not the information commissioner came to the right decision, in doing so the tribunal considers the evidence gathered by the Information Commissioner, the evidence from the Appellant and the arguments on both sides.
15. In this case the Information Commissioner concluded that, on balance, there was no information within the scope of the request. In exploring whether this is correct the tribunal has considered all the material submitted to it. The emails from the bailiff manager in paragraph 1 was described as “misleading” by the MOJ and an explanation given by the MOJ in the various letters sent to him dealing with his complaint. The Ombudsman has refused to take it further. It is clear however that Mr Hughes remains dissatisfied and is continuing to pursue his complaint about the bailiff manager. He has been unable to produce evidence which indicates that further material is held, the MOJ acknowledged that what he had been told in the 7 December 2018 email was misleading, that complaint is closed.
16. FOIA only gives access to recorded information, i.e. information for which there is a written record. The MOJ explanation which was sent to Mr Hughes in Spring 2019 was that there was no senior police officer and the name of the (beat) police officer was not recorded. Mr Hughes has repeatedly indicated that he does not believe any contact took place. If that is so, then he should not be pursuing an appeal for that information. The MOJ have not been able to find any recorded information passing between the bailiff manager and the judge and has suggested that information may have been passed by a conversation. The Information Commissioner has concluded that information was not held. The tribunal is satisfied that there is no recorded information

about the identity of the police officers or recorded information relied upon to come to her decision by the judge.

17. The tribunal therefore upholds the decision of the Information Commissioner.

Signed Hughes

Judge of the First-tier Tribunal

Date: 25 April 2021

Promulgated: 26 April 2021