



NCN: [2022] UKFTT 00360 (GRC)
Case Reference: EA/2019/0330

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard: Remote hearing by video

**Heard on: 4 October 2021
Decision given on: 3 October 2022**

Before

**TRIBUNAL JUDGE LYNN GRIFFIN
TRIBUNAL MEMBER NAOMI MATTHEWS
TRIBUNAL MEMBER STEPHEN SHAW**

Between

PETER BESWICK

Appellant

and

INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: In person

For the Respondent: Did not attend and was not represented

Decision: The appeal is Dismissed

Substituted Decision Notice: not applicable

REASONS

The facts and background to the appeal

1. On 22 December 2018 the appellant made a request for information to the South Western Ambulance Service NHS Foundation Trust (the trust) via the WhatDoTheyKnow website. The request was for information concerning the novichok poisonings that had taken place in Wiltshire. The appellant's request asked

*“What time was the ambulance service alerted?
When were the ambulances despatched? (each)
When did they arrive on the scene? (each)
When did they depart the scene? (listing details for each patient, and those that did not convey patient(s))
When did each patient arrive at hospital?
For incidents in Salisbury on the 4th March 2018 and Amesbury 30th June 2018
What vehicle(s) was/were involved in the Amesbury Ambulance station closure / army involvement?
Please give details.”*

2. The initial response from the trust was sent on 28 December 2018 and directed the appellant to the police but after an internal review the trust responded on 13 March 2019 that it was withholding the requested information under the exemptions provided in sections 24, 38 and 40 of the Freedom of Information Act 2000.
3. The appellant complained to the respondent initially on 6 March 2019 and then renewed his complaint on 18 March 2019 after the internal review. The respondent considered the complaint and in decision notice FS50826939 dated 12 August 2019, decided that the trust had correctly applied the provisions of the s24 FOIA exemption and that the public interest favours maintaining the exemption and withholding the information.

The appeal

4. The appellant appealed that decision to this tribunal by way of notice of appeal dated 6 September 2019. He stated that the outcome he was seeking was for his requests to be answered “openly, transparently and honestly”. His grounds of appeal were in summary
 - a. There have been conflicting public statements about the timing of the calls to the emergency services and he wanted to know which was correct
 - b. The public statements made by the police means that the public authority cannot rely on sections 24, 38 and 40 FOIA as no harm can be done by release of the information he seeks
 - c. The public interest test has been satisfied by reference to the extensive media coverage of the events, police, and NHS statements
 - d. There is no substance to the suggestion that terrorists could gain valuable information from the information he has requested because performance figures for ambulance response times are published, e.g. by the Care Quality Commission. Average response times are of more use to terrorists.
 - e. He would like to know which control room, the ambulance control room commander came from and how long it took them to get there.

- f. There were “delays” in the immediate response and later testing and he would like to know “what part the ambulance service played in those delays (if any)”
5. The Information Commissioner’s response was dated 5 November 2019. The respondent pointed out that the grounds of appeal did not aver how the decision notice was wrong in law or involved an inappropriate exercise of discretion. Moreover, the response highlights the grounds make additional requests for information that were not included in the original request, these are the points at e and f above.
 6. The response to the appeal maintains the correctness of the decision notice and submits that
 - a. The respondent correctly described the operation of section 24 FOIA as a qualified exemption subject to the balance of whether the public interest in maintaining the exemption outweighs the public interest in disclosure
 - b. The challenge to the decision notice is based on the appellant’s scepticism and personal beliefs. The former is a factual dispute and the tribunal should favour the respondent’s assessment in the decision notice which properly applied the law. The latter is a subjective set of beliefs unsupported by evidence and is not relevant to the issues to be decided but if it is to be part of the balance then his beliefs should be given minimal, if any, weight.
 - c. The alleged public statements relied upon by the appellant to assert that information is in the public domain are of unknown provenance and should be given minimal weight, if any.
 - d. The appellant’s submissions on the balance of the public interests confuses what is interesting to the public with that which is in the public interest.
 - e. The appellant mischaracterises the decision notice which found that the public interest in maintaining the exemption overwhelmingly outweighs the public interest in disclosure.
 - f. The appeal should be dismissed
 7. The appellant replied on 13 November 2019. He submits that
 - a. The lack of a national security certificate signed by a Minister of the Crown is “significant”
 - b. An analysis of the contents of a BBC programme demonstrates that the government wanted to give a “unified explanation of events” but there are holes in their narrative which the respondent has “allowed”
 - c. The decision notice is defective in that there is no explanation or evidence supporting the conclusions on the public interest balance

- d. The trust is acting “in concert with” the police in refusing to clarify conflicting information which if it was sensitive should not have been placed into the public domain by them. They are trying to apply exemptions retrospectively
 - e. His requests in the grounds of appeal are not novel and were clear in his original information request
 - f. The respondent misunderstands and has misapplied the public interest test
 - g. The respondent was wrong not to ask him to substantiate his allegations with evidence
 - h. FOIA should not be used to “create a false or confused picture” where exemptions are “abused” for the purposes of national security
8. The hearing was scheduled to be heard by cloud video platform on 4 October 2021. The respondent indicated that they would not be attending, nor be represented and was content to rely on their written submissions. The tribunal was content to proceed by way of video hearing and there was no indication that there were issues with communication for the tribunal or the appellant during the hearing.
9. The tribunal considered an open bundle of documents with 140 pages, in addition we considered a closed bundle.
10. At the hearing the tribunal explored the grounds of appeal with the appellant who explained the points he had made previously, as summarised above. He also submitted that
- a. He wanted to achieve clarification of what was true as regards the events surrounding the poisonings, as the timing were not clear
 - b. The decision notice was wrong in law as the respondent had communications with the trust that he was not privy to and there were redactions in the bundle. As he had not been informed of that communication, he submitted this supported his position that there had been falsehoods perpetrated about the events
 - c. There is no definition of national security. He believed the security services were involved but had been told they had not been.
 - d. He relied on the tribunal to identify whether the decision notice was wrong in law
 - e. International relations are not the business of the ambulance service. there was no attempt to go to a minister to get a national security certificate. They may not have told lies but may be naively reporting what the police told them to say.
 - f. He did not believe that the agent used to poison the victims was novichok.

Legal Framework

11. The Freedom of Information Act 2000 creates a duty on public authorities to communicate information requested from them subject to exemptions from that duty and in certain circumstances a public interest balance. Section 24 provides an exemption from the duty to communicate in s1(1)(b) where that exemption is required for the purpose of safeguarding national security. The section states

24. National security.

(1) Information which does not fall within section 23(1)¹ is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

(3) A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.

(4) A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

12. There is no definition of the term “national security” within the statute. However, the House of Lords has considered the term and the position outlined in SSH D v Rehman [2001] UKHL 47 by Lord Slynn can be summarised as follows

- a. “national security” means the security of the United Kingdom and its people;
- b. the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- c. the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- d. action against a foreign state may be capable indirectly of affecting the security of the UK; and
- e. reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom’s national security

13. Neither is there a definition of the threshold to be met before the exemption is “required for the purpose of safeguarding national security”. It is interpreted by the respondent to mean “reasonably necessary” which has been accepted by this tribunal in previous cases. As is pointed out in Coppel KC on Information Rights 5th ed page

¹ That is information which was not directly or indirectly supplied by and does not relate to any of the security bodies

675 note 394, both the statutory language and the formula proposed by the respondent are evaluative and we agree that it is the language of the statute that is to be applied, albeit illustrated by the reference to synonymous language.

14. The exemption provided by s24 FOIA is a qualified exemption and so even if the information is exempt information within the scope of s24 it is necessary to consider whether in all the circumstances the public interest favours disclosure of the information or maintenance of the exemption.
15. The public interest in disclosure is not the same as matter which interests the public as pointed out by Lord Wilberforce in British Steel Corp v Granada Television [1981] AC 1096 at page 1168
16. Given that the information will have been found to be required for the purpose of safeguarding national security by the time the balancing exercise is undertaken it is likely that the weight to be attached to the public interest in maintenance of the exemption is likely to be substantial, but it is not an absolute exemption and should not be seen as such. In some circumstances the public interest in disclosure of the information may be sufficiently weighty to equal or outweigh the inherently weighty interest in protecting matters required for purpose of safeguarding national security.

Analysis

17. The gravamen of the information sought is not in the factual detail but in the type of information sought in the request. The appellant seeks the time it took ambulances to be dispatched, to reach the victims and for them to arrive at hospital. He seeks details of the vehicles used and where they are based. He wants this information to gain a clearer picture of what happened in Salisbury on 4 March 2018 and Amesbury on 30 June 2018.
18. The appellant seeks clarification of which version of events is true, but we remind ourselves that disclosure under FOIA is disclosure to the world and it is that context that we must consider the application of the exemption.
19. The appellant relies on the fact that he believes that some of the information he is seeking is already in the public domain, but we note that there has not been any official confirmation of any of the matters that he brings to our attention that have been published by the media. Even if people from different agencies have been reported as giving conflicting accounts, even if they are styled as spokesmen, without official confirmation those accounts are inherently unreliable and any formal disclosure by a public authority may therefore have the effect that it authenticates one or more parts of that matrix of information. In so doing any disclosure communicates an extra element; that the information is true. In our view that confirmation would be of great value to those who sought to target the UK.
20. The appellant says that a terrorist would not be interested in the detail of the information he has requested but only interested in general response times which are already published by the CQC. However, in our view, this appellant is not qualified

to opine on what would be useful to a person who wants to bring terror to the streets of this country.

21. The appellant's view is to be contrasted to the reasoned explanation provided by the trust in their FOIA review and their response to the Information Commissioner in their letter of 8 May 2019. We agree with the trust in their assessment which was properly relied upon by the respondent.
22. We conclude that the provision of the details of how the trust responded to these incidents could increase the risk of a future attack on the UK because such information about the emergency service response to such an event, could provide a terrorist with greater knowledge and therefore increase their confidence to plan the attack.
23. We note that the request also asks for the details of vehicles used in the "army involvement" in Amesbury. Disclosure of such information has a clear capacity to adversely impact on matters of national security by providing some details about the military response to part of the events. It seems to us that the disclosure of the army vehicles involved in such an incident has the capability of providing insights to those qualified to understand such deployment or to those who can place the information alongside other data they have gathered to better facilitate their criminal enterprise.
24. The appellant regards the requested information as anodyne or harmless, but as pointed out by the respondent in guidance, those who plot terror attacks can be highly motivated, gathering a range of information that is then pieced together to reveal a bigger picture. Sometimes referred to as a jigsaw or mosaic approach. The requested information may seem harmless to the appellant but in combination with other information it may prove vital in the planning of a future attack to enhance its prospects of success by providing a better understanding of the emergency response times.
25. The appellant says that there would be no impact on international relations from the publication of this information. However, even in 2018 relations between the UK and Russia were sensitive and the initial attack in Salisbury targeted two Russian citizens one of whom was believed to be an intelligence agent. The suspects went to Russia. The safeguarding of National Security requires the maintenance of diplomatic relations with other states, co-operating with them to combat terrorism. The exemption can be engaged where a disclosure would have an adverse impact on such efforts even if it would not result in a direct or immediate risk to the UK.
26. Furthermore, the Salisbury and Amesbury incidents were investigated by counter-terrorism units within the UK. The nerve agent used was, novichok², a chemical weapon which was believed to have originated in Russia and sanctions were in

² The appellant suggested at the hearing that the agent used was not novichok. We reject that submission as being without foundation

placed on the Russian Military Intelligence Agency (GRU). There is clearly a multinational aspect in the response to the incidents.

27. In this case the publication of the requested information to the world has the potential to adversely affect the reciprocal co-operation between the UK and other states in combating international terrorism and the potential to negatively impact on UK/Russia relations.
28. There is no certificate issued by a Minister of the Crown but this is not significant. Such a certificate is not required for the application of s24, which in the absence of a certificate will be considered on the evidence. We have taken into account that the public authority in this case has relevant expertise and experience in resilience and emergency procedures and this is the reason they did not seek a certificate and accept this explanation for the decision they took not to seek a certificate.
29. We have concluded that the exemption of the information requested from the duty to communicate is required for the purposes of national security. There is a real possibility that the disclosure of the requested information would undermine national security.
30. Turning then to the balance of the competing public interests. We have decided that there is a strong public interest in maintaining the exemption where the requested information is required for the purposes of national security. As the respondent states "it is a matter of the most fundamental public importance" but it is nonetheless necessary to examine the competing public interests to determine if they equal or outweigh that strong public interest.
31. The appellant's case is that the public interest in disclosure outweighs the public interest in maintaining the exemption. The heart of his case is that it is important to know exactly what happened in Amesbury, and that there are statements made/reported in the media about the events which he says conflict with each other about the events in Salisbury. The appellant submits that he, and thereby the public, should be told which version is correct and this information will partly achieve that aim.
32. However, satisfying the public's curiosity or even the interests of a subsection of individuals who may have been directly affected or involved does not amount to a wider public interest in the information. Even if there were a public interest in resolving the discrepancies the appellant relies upon, that would not outweigh the public interest in maintaining the exemption of material the release of which we have found would pose a real risk to national security.
33. There is a public interest in the promotion of openness and transparency on the part of public authorities. It is important as part of our democratic system in that it is one of the ways in which such bodies are held to account. The appellant's submission is that there is any form of concerted effort to limit the release of information by government agencies that would, if it were true, contribute to the public interest in disclosing the information to reveal that dissembling. However, we do not accept his

submission which is founded on his subjective belief and is made without evidential support and which in our judgment amounts to no more than speculation.

34. We acknowledge that the release of the information may have led to a measure of reassurance of the public about the capacity of the trust to respond to such incidents but media coverage revealed their involvement and the provision of the details would be unlikely to increase that awareness.
35. We accept that there are real and specific threats to national security in the UK. The trust covers an area that equates to 20% of mainland England and includes popular holiday destinations and the venues for successful festivals, concerts, and Christmas markets. A threat level assessment from MI5 points out that terrorists target less well protected places where crowds gather such as these due to the likelihood of less security and the element of surprise.
36. In this case we have concluded that the public interest in maintaining the exemption from disclosure overwhelmingly outweighs any and all of the competing public interests whether they are examined as an individual interest or in combination.
37. This is not a case where the time at which the assessment of the public interest would affect our decision. We take the view that the balance of interests have not changed from the point of the request until the date of the hearing notwithstanding the appellant's submissions about subsequent publication of comments or media reports about the events.
38. Given our decision it is not necessary decide whether there were any novel requests made in the grounds of appeal.
39. As we have decided that the requested material is exempt under s24 we are not required to go on to consider the other exemptions relied upon by the public authority.
40. There is no closed decision in this case.

Conclusion

41. For these reasons the appeal is dismissed. The decision notice issued by the Information Commissioner reference FS50826939 was in accordance with law and did not involve the wrongful exercise of a discretion.

Lynn Griffin

Signed : Tribunal Judge Lynn Griffin

Date: 3 October 2022