

Information Tribunal

Appeal Numbers: EA/2006/0008
EA/2006/0009
ICO Ref: FS50096401

FREEDOM OF INFORMATION ACT 2000
(Determine on Papers on 26th May 2006)

**Heard
On Papers
Prepared**

**Decision Promulgated
16th June 2006**

Before

**Mr. David Marks
INFORMATION TRIBUNAL DEPUTY CHAIRMAN**

And

**Mrs Jacqueline Blake and Mr John Randall
LAY MEMBERS**

Between

STANLEY ROBERTS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION

The Tribunal has decided to dismiss the Appellant's appeals on these consolidated appeals.

Reasons for Decision

1. The Appellant appeals in two separate appeals which have been consolidated in respect of matters arising out of the Lockerbie disaster which occurred when Flight PA103 flight operated by Pan American Airways which had taken off from Heathrow Airport, crashed on 21 December 1988. By directions made and dated 3 April 2005, the Tribunal directed that the Appellant provide details of various items of evidence referred to in his Notices of Appeal, in particular, that he provide the names and addresses of witnesses he referred to, as well as supplying any documentation on which he relied. The same was to be done within 14 days of the date of the direction. The direction went on to specify that should the above direction not be complied with, the Tribunal would proceed to deal with the matter on paper. The Appellant has failed to comply with the directions and the Tribunal has therefore decided to proceed with the appeals without an oral hearing.
2. The Appellant's two requests were made with regard to his allegation that five 747 aircraft were grounded at Heathrow Airport, at the time of the disaster. In early 2005, the Appellant had informed the Member of Parliament for St. Helen's North, Dave Watts MP, that he had made a request of the Civil Aviation Authority (the CAA) for details about the grounding of the aircraft. Mr Watts replied by letter dated 1 March 2005 stating that he had attempted to find the answer to the Appellant's questions, adding the following, namely:

"The Department of Transport informs me that they have no records of any 747 aircraft being grounded following the Lockerbie terrorist attack. However, I am informed that it is possible Pan Am could have grounded some of their flights, but the Department of Transport does not hold information regarding action taken by the American authorities.

I am also informed that the CAA authorities did withhold safety certification for some Boeing aircraft at that time which effectively grounded some aircraft.

The research department has informed me that they have provided me with as much information as they can, and if you need any further information you should contact the CAA directly.”

3. In the wake of that letter, the Appellant made requests for information under the Freedom of Information Act (the 2000 Act), to the Air Accident Investigation branch (AAIB) and to the CAA. With regard to the first request, he sought:

“...registration details of the five aircraft impounded on the night 21-12-1998 and the names of the airlines involved. Also the reason given for the grounding of these aircraft and which authority implemented the action.”

4. The AAIB responded to the Appellant on 29 June 2005 stating that it held no information relating to the alleged “impounding” of Boeing aircraft on 21 or 22 December 1988 nor any information relating to the removal of certificates of their airworthiness. The AAIB added that neither of these procedures fell within the scope of its responsibilities or powers.
5. The same request was made of the CAA. The CAA responded on 9 May 2005 stating that it had no records of any grounding of Boeing 747 aircraft on 21 December 1988.
6. With regard to both responses, the Information Commissioner (the Commissioner) received a formal complaint on 28 June 2005. On 4 November 2005, the Commissioner wrote to both the AAIB and the CAA, asking both public authorities whether they held information of descriptions specified in the Appellant’s request.
7. The CAA responded on 7 November 2005. It explained that it had received a number of requests for the same information from the Appellant on prior occasions, but that on each occasion, it had maintained that it did not hold any such information. The CAA added that the CAA itself did not impound any Boeing 747 aircraft at the time in question, and that it was unaware of any grounding of any such aircraft.

8. The response of the AAIB made on 21 November 2005 was to the same effect. It too confirmed that it had received prior requests from the Appellant, adding that it had contacted the Department of Transport International Aviation & Safety Branch, and the Transport Security & Contingencies Directorate as well as the CAA itself. The AAIB confirmed that the Appellant had submitted 12 letters to the AAIB with regard to the same information and both the Chief Inspector of Air Accidents and the Deputy Chief Inspector had personally written to the Appellant advising him that the AAIB held no such information.
9. The Commissioner then issued two Decision Notices, both dated 14 February 2006 stating in each that he was satisfied with the assurances received from both authorities and that he duly considered that the Appellant's requests had been dealt with in accordance with the 2000 Act.
10. The Appellant responded by issuing two Notices of Appeal. The first, bearing the reference EA/2006/0008 and relating to the AAIB, in essence takes issue with the AAIB's contention that it did not have the relevant information, and is simply reasserting the Appellant's allegation that the grounding or groundings occurred. The Tribunal intends no discourtesy to the Appellant by not setting out the grounds of this appeal in full, but fails to see that any arguments additional to the assertion just referred to are contained or reflected in the grounds which are set out.
11. In the Appellant's Notice of Appeal relating to the CAA, the Tribunal again regards the grounds of appeal as maintaining nothing other than that the CAA in some way is mistaken in its contention that the requested information is not held by it.
12. The Commissioner subsequently served formal Replies in the two appeals. The contents of both Replies have, in effect, been set out above and can be summarised simply by describing the Commissioner's position as being one in which he was satisfied in each case that the requests had been dealt with in accordance with the Act's requirements.
13. On an appeal to this Tribunal and by virtue of section 58(1) of the 200 Act, if the Tribunal considers:

- (a) that any Decision Notice against which the appeal is brought is not in accordance with the law; or
- (b) to the extent that the Notice involved the exercise of discretion by the Commissioner that the Commissioner ought to have exercised it differently, then the Tribunal shall either allow the appeal or substitute such other notice as could have been served by the Commissioner. In any other case, it shall dismiss the appeal.

By sub-section (2) of section 58 of the 2000 Act, it is provided that the Tribunal may review any finding of fact upon which the Decision Notice is based.

- 14. The Tribunal finds it impossible to conclude that the Commissioner's decisions in both appeals were contrary to law. The onus of demonstrating that an error of law has been committed lies firmly upon the shoulders of the Appellant. Nowhere is there any suggestion that there has been any misapplication of legal principle by the Commissioner in either case.
- 15. Equally, with regard to any possible wrongful exercise of discretion by the Commissioner, the Tribunal finds it impossible to see how the decisions of the Commissioner can be faulted. In particular, the Tribunal notes that, as indicated above, the Commissioner took the prudent and practical precaution of, in effect, double checking that neither public authority held or retained any record or information of the type sought by the Appellant. Furthermore, as recorded above, each public authority had on a number of previous occasions been requested for the same or similar information by the Appellant and had informed the Appellant on such occasions that no such information was held or retained.
- 16. In all the circumstances, the Tribunal considers it was eminently reasonable for the Commissioner to conclude in each case, that the Appellant's requests had been dealt with in accordance with the 2000 Act.
- 17. The Tribunal has paid particular attention to the contents of the letter dated 1 March 2005 sent by Mr Watts MP to the Appellant as quoted above. Although it is noted that the source of information referred to is not revealed or alluded to by Mr Watts, and noted equally that there is a suggestion at

least that the CAA did withhold “safety certification for some Boeing aircraft at that time...”, the Tribunal finds that any question stemming from what the CAA may or may not have done is overtaken by the specific terms of the requests made by the Appellant in both appeals. These requests for information resulted in a specific determination, first by the CAA and thereafter by the Commissioner in his Decision Notice, that the information is not held. No evidence has been produced by the Appellant to refute that determination, and the Tribunal is satisfied that, in making his determination, the Commissioner made all reasonable enquiries.

18. For all the above reasons, the Tribunal therefore dismisses both appeals.

Signed: 

David Marks
Deputy Chairman

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