



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2015/0239

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS 50593831
Dated: 21 September 2015**

Appellant: Deborah Thomas

Respondent: INFORMATION COMMISSIONER

On the papers: Fox Court, London

Date: 9 March 2016

Date of decision: 11 April 2016

Date of Promulgation 14th April 2016

Before

ROBIN CALLENDER SMITH
Judge

and

ANNE CHAFER and JEAN NELSON
Tribunal Members

Representations:

For the Appellant: Ms D Thomas.

For the Respondent: Ms S Taylor, for the Information Commissioner.

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Subject matter: FOIA

S.1 (3)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 21 September 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant (Ms D Thomas) wanted information from the Ministry of Justice (MoJ) about the number of cases struck out as the result of administrative errors.
2. The MoJ asked the Appellant to clarify the request and she did this on two occasions but the MoJ believed that it required further clarification before it could respond.
3. As a consequence, it relied on section 1 (3) FOIA. This section allows a public authority that reasonably requires further information in order to identify and locate the information requested, to wait until that information is supplied before communicating whether it holds the information (under section 1 (1) FOIA).
4. As will become apparent in this decision, the Appellant, the MoJ and the Information Commissioner have, to an extent, been at cross-purposes during the information request that forms the subject of this appeal.

The request for information

5. The Appellant made two requests to the MoJ on consecutive days: 27 November 2014 (the subject of this decision notice and which relates to administrative errors) and on 28 November 2014 (an information request about the general handling of disabled individuals' cases).
6. The Information Commissioner notes (at Paragraph 4 of the Decision Notice under appeal) the Appellant was also asked to provide further clarification about her information request of 28 November 2014 and that "*this had led to some confusion on the part of both parties*".
7. For the purposes of this appeal, on 27 November 2014 the Appellant wrote to the MoJ requesting information in the following terms:

After discussions with the Parliamentary and Health Service Ombudsman, it has been decided that information relating to the number of cases which were struck out as a result of administrative error is now required.

8. The MoJ responded on 7 January 2015 and refused to provide the requested information.
9. It applied section 21 FOIA – information accessible to applicants by other means – and the response referenced both the Appellant's 27 and 28 November 2014 information requests but only quoted and addressed the 28 November 2014 request.
10. From Paragraph 7 of the Decision Notice it is clear that the Commissioner understood that the MoJ:

....later dropped its reliance on section 21, because it decided the request was not specific enough for it to respond to and instead required additional clarification from the complainant to both requests.

11. The Commissioner eventually concluded that it was reasonable that the MoJ had applied section 1 (3) FOIA in respect of this matter. The MoJ still

required additional clarification in terms of the case types and a specific time period in order to determine whether it could respond to the request.

Tribunal's Analysis

12. In respect of Paragraph 5 of the Decision Notice, in the request dated 27 November 2014 (p 34) the use of 'now' suggests that there has been previous correspondence between the parties *'After discussions with the Parliamentary and Health Service Ombudsman, it has been decided that information relating to the number of cases which were struck out as a result of administrative error is **now** required* (emphasis added).
13. In addition to asking the HMCTS (South West Region) to contact her if they wish to discuss the contents of the letter, the Appellant also suggests it directly contacts the Parliamentary and Health Ombudsman.
14. Although no copy of the request dated 28 November 2014 is included in the bundle it appears from the response to the Appellant dated 15 December 2014 HMCTS Ref no: 94911 (p 35 - 36) that the wording was *'After discussions with the Parliamentary and Health Service Ombudsman, it has been decided that information relating to general handling of disabled people's cases is **now** required* (emphasis added). This also suggests previous correspondence.
15. The Appellant replied to HMCTS on 3 January 2015 quoting Ref no:94911 (p 37) and pointed out that the HMCTS had only referred to her request dated 28 November 2014 (general handling of disabled people's cases) and had failed to address the different request dated 27 November 2014.
16. From Paragraph 6 of the Decision Notice it is clear that HMCTS replied on 7 January 2015 quoting Ref no: 94911 (p 38 – 42) stating that the two letters received on 9 December 2014 were identical requests relating to general handling of disabled people's cases.

17. From Paragraph 8 of the Decision Notice, the Appellant replied on 10 January 2015 to the HMCTS (South West Region) quoting Ref no: 94911 (p 43 – 44) reiterating that the requests dated 27 November 2014 and 28 November 2014 were different and including the wording of the request 27 November 2014.
18. The Appellant complained to the Commissioner on 29 January 2015 ((p 33) about the failure of the HMCTS to respond to the request dated 27 November 2014.
19. The Appellant refers to the Ministry of Justice rather than the HMCTS and quotes the Ministry of Justice Ref no 94911 which refers to her request of 28 November 2014 which was reasonable because, at this point, she did not have a reference for her request made on 27 November 2014.
20. The Commissioner wrote to her on 9 February 2015 (p 98) ICO Ref no FS50569897 regarding her complaint about non-response to her request of 27 November 2014 stating that 'I have contacted the MoJ today to ask it whether it has responded'.
21. On the same day, 9 February 2015 (p 48 – 50 and p 99 – 100) the MoJ Data Access and Compliance Unit, based in London wrote to the Appellant, with a copy to the ICO, apologising for their oversight in not responding to the request dated 27 November 2014. This request was given Ref no 95891.
22. The MoJ requested further clarification stating that they were unclear as to the exact scope of the information requested and asking for specific dates, courts and types of cases required and that they were unable to answer the request without further information.
23. This same letter also acknowledged the Appellant's dissatisfaction with the MoJ response to her request dated 28 November 2014 (Ref no FOI 94911) and informed the Appellant that an internal review would be

carried out by the Data Access and Compliance Unit under Ref no IR 95890.

24. On 10 February 2015 (pg101) the Commissioner wrote to the Appellant using its Ref no FS50569897. He enclosed a copy of the MoJ letter dated 9 February 2015 and stated that the Appellant's complaint of non-response to the request dated 27 November 2014 would be closed pending the MoJ receiving clarification from her.
25. On 28 February 2015 the Appellant wrote to the ICO quoting Ref no FS50569897 (p 47), which refers to Ref no 95891, stating the she had received a letter dated 23 February 2015 from the MoJ.
26. This letter was not included in the bundle. She stated that the MoJ had apologised for their failure to respond to the request (27 November 2014) and had still failed to answer this request and had reiterated their response to her request dated 28 November 2014.
27. The Commissioner replied to her on 9 March 2015 Ref no FS50569897 (p 51) clearly referring to the 27th November 2014 request for *cases which were struck out as a result of administrative error*. Enclosed was a copy of his previous letter dated 10 February 2015 and reiterated that as 'Your request simply asks for the number of cases struck out, but does not specify which cases, where, or within a time frame' the MoJ were not in a position to provide a response (to Ref no 95891) without clarification.
28. On 10 March 2015 Ref no FS50573309 (p 102 – 104) the Commissioner wrote to the Appellant regarding her complaint about the MoJ response (Ref no 94911) to her request dated 28 November 2014 relating to the handling of disabled people's cases and the MoJ's application of section 21 exemption to this request.
29. At Paragraph 11 of the Decision Notice it is stated that following receipt of some additional paperwork from the Appellant, the Commissioner had located her clarification in a letter dated 15 March 2015 (p 105).

30. However, this letter was sent in reply to the ICO letter dated 10 March 2015 and relates to FS50573309, MoJ Ref no 94911, request dated 28 November 2014.
31. The Tribunal believes that it is reasonable to assume that the Appellant was clearly aware that this was her request about *general handling of disabled people's cases* as she refers to the Section 21 exemption – information is reasonably accessible by other means – which is the exemption applied by the MoJ in their response dated 7 January 2015, MoJ Ref no 94911 (p 38 – 42).
32. At Paragraph 12 of the Decision Notice it is also clear that the Commissioner sent this clarification to the MoJ on 25 March 2015 and wrote to the Appellant on 13th April 2015 under Ref no FS50573309 (p 106) explaining that the MoJ thought that the clarification added to the request (28 November 2014) and therefore the MoJ would deal with this as a new request.
33. The HMCTS (South West Region) wrote to the Appellant on 17 April 2015 using MoJ Ref no 96556 as the **new** reference for the 28 November 2014 request (p 70 – 71 and 107 - 109).
34. The MoJ informed her that it required further clarification of the types of complaints and the specific dates. The MoJ confirmed that they were applying s1(3) until clarification had been received and also drew attention to s12 (cost parameters).
35. At Paragraph 13 of the Decision Notice the Commissioner refers to her reply dated 5 May 2015 to HMCTS Ref no 96556 (p 61).
36. This still refers to the request dated 28 November 2014, however in the third paragraph of this letter, which is not quoted in the Decision Notice, the Appellant queries why the HMCTS are '*asking me to repeat myself instead of obtaining this information from the sources you already have available*'.

37. The Commissioner wrote to the MoJ on 12 May 2015 (p 52 – 53) This letter related mainly to their case Ref no FS50573309, MoJ Ref no 94911/96556 request dated 28 November 2014 but a paragraph informed the MoJ that their case regarding the 27 November 2014 request (MoJ Ref no 95891) had been closed pending the requested clarification from the Appellant. The Commissioner's Ref Number had an incorrect digit.
38. The Appellant then sent further correspondence to the ICO about both her requests but no additional clarification.
39. The Decision Notice refers to two letters the ICO sent to the Appellant, one dated 1 June 2015 (p 54 – 56) informing her that her complaint Ref no FS50569897 (27 November 2014) was closed 'pending the requested clarification'.
40. The second, dated 9 June 2015 (p 58 – 59), followed a telephone conversation with the MoJ the previous day. This suggested in relation to the request of 27 November 2014 (the year of requests in Commissioner's letter was incorrectly stated as 2015) that '*the most logical way forward would be for you, or someone acting on your behalf, to contact the MoJ by telephone and to talk through exactly what information it is that you are seeking.*' This letter concluded by informing the Appellant that both ICO complaints would be closed pending clarification from her to the MoJ.
41. At Paragraph 15 of the Decision Notice there is reference to the Appellant's letter to the MoJ of 8 June 2015 asking for an internal review.
42. The only letter of this date in the bundle is at p 89 and refers to Ref no 96556 28 November 2014 which was sent to the HMCTS. But the response (p 66) is from the MoJ (Data Access and Compliance Unit) IR Ref no 98230 dated June 2015 and in the first paragraph refers an internal review of Ref no 95981 which the Tribunal believes should be 95891 (27 November 2015) but then states that this request was 'for information on disabled peoples cases and the number of cases which were struck out as the result of an administrative error which is both requests.

43. The rest of the letter refers to 96566, which the Tribunal believes should be 96556, for which the clarification was 'deemed insufficient to enable the request to be responded to.' The response continues to refer to correspondence relating to 96566 and concludes '*On this basis I am satisfied that the response you received to FOI 96566 on 17 April 2015 was correct.*'
44. But the Tribunal notes that FOI 96556 is the new reference number given to the request of 28 November 2014 asking about *the general handling of disabled people's cases*.
45. There appears to be no internal review conclusion in relation to the 27 November request about *the number of cases which were struck out as a result of administrative error is now required*.
46. Paragraph 16 of the Decision Notice refers to the Appellant's letter to the Commissioner (p 65) which refers to 95981 (this is the incorrect ref no used by the MoJ see above) and IR ref 98230.
47. The Tribunal notes that two of the letters which the Appellant refers to in the sixth paragraph are about the request of 28 November 2014.
48. The Tribunal notes that the Commissioner informed the Appellant on 19 August 2015 that the case FS50569897 was about the MoJ's non-response to her request of 27th November 2014 and that the MoJ had provided a response and then carried out an internal review.
49. As the Appellant was dissatisfied with the outcome of the review the ICO set up a new case FS50593831.
50. The decision notice for this case is the subject of this appeal.
51. It is clear from the correspondence between the Commissioner and the MoJ (for instance p 79 – 82) that both parties were confused about which reference numbers related to the two separate requests and the internal reviews and this has not been helped by mistakes in these reference numbers and dates by both parties.

52. This has also not been helped by the Appellant's correspondence which referred to previous correspondence about the request dated 28 November 2014.
53. In addition, the Tribunal does not have copies of all correspondence referred to in the bundle.
54. The Tribunal has also found it difficult to follow the correspondence but cannot find any correspondence in the bundle which informs the Tribunal that the Appellant intended the clarification in her letter dated 15 March 2015 (p 105) to be applied to the request dated 27 November 2014.
55. On the evidence before it, the Tribunal would question whether the internal review (p 66) does provide an outcome in relation to the request of 27 November 2014.
56. The Tribunal hopes that the "road map" of confusion outlined above assists the various parties – particularly the Appellant and the MoJ – in addressing the further clarification required before the issues in this appeal can be resolved.
57. It does, however, consider that it is reasonable that the MoJ has applied section 1 (3) FOIA to this information request.
58. Our decision is unanimous.
59. There is no order as to costs.

Tribunal Judge

11 April 2016