



Neutral citation: [2023] UKFTT 1079 (GRC)

Case Reference: EA/2022/0191

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

**Decided without a hearing.
Decision given on: 15 November 2023**

Before

**TRIBUNAL JUDGE NEVILLE
TRIBUNAL MEMBER S COSGRAVE
TRIBUNAL MEMBER A CHAFER**

Between

EDWARD WILLIAMS

Appellant

and

**(1) INFORMATION COMMISSIONER
(2) COMMISSIONER OF POLICE FOR THE METROPOLIS**

Respondents

Decision: The appeal is dismissed.

REASONS

1. The Freedom of Information Act 2000 ("FOIA") places a duty on a public authority to comply with a request that information it holds be provided, subject to various exemptions. On 6 March 2021, Mr Williams made such a request to the Commissioner of the Metropolitan Police ("MPS") for a copy of the:

... 400-page report that is the product of a four-year Metropolitan Police investigation (codenamed 'Operation Lydd ') into UK involvement in the alleged rendition to Libya and ill-treatment of Abdul Hakim Belhaj and his wife, Fatima Boudchar, and Sarni Al Saadi and his wife and children.

2. The background to that investigation is recorded by the Supreme Court in Belhaj v Director of Public Prosecutions [2018] UKSC 33 at [1]:

In short summary, the first Appellant, Mr Belhaj, was a political opponent of the government of Colonel Gaddafi in Libya. He and his wife Ms Boudchar (the second Appellant) contend that they were abducted and maltreated by agents of Malaysia, Thailand and the United States, and eventually “rendered” to the Libyan authorities, by whom they were imprisoned, tortured, and subjected to other serious maltreatment. The Appellants allege that this was done with the connivance of the British Secret Intelligence Service and in particular that of Sir Mark Allen, who is said to have been a senior officer of that service. We make no finding about that; any more than the courts below did. [...]

3. The issue in the proceedings before the Supreme Court was the decision of 9 June 2016 of the Director of Public Prosecutions not to bring any prosecutions arising out of those events. The material upon which that decision was based included that arising out of Operation Lydd, as observed by Lord Sumption at [3]:

[The Director says that] the decision not to prosecute was supported by an examination of some 28,000 pages of statements, exhibits and other documents which were considered by the CPS and Treasury Counsel but could not be disclosed to Appellants because of its classification (“TOP SECRET - STRAP 2”). ...

4. Mr Williams had initially requested disclosure of that full dossier, which was rejected. He subsequently narrowed his request to the 400-page report, the existence of which appears to have first been confirmed in a press release issued by the All-Party Parliamentary Group on Extraordinary Rendition dated 24 April 2018. Its wording was reproduced by Mr Williams in his request at paragraph 1 above.
5. In its response of 19 May 2021, MPS confirmed that it held the report. It refused to disclose the report, relying on the exemptions at s.23(1) of FOIA (information supplied by, or relating to, bodies dealing with security matters), and s.27(1) (prejudice to international relations). In a subsequent internal review dated 16 July 2021, MPS continued to rely on those exemptions, and additionally relied on s.24(1) (exemption required for the purposes of safeguarding national security), s.30 (concerning investigations), and s.40 (concerning personal information).
6. Dissatisfied, Mr Williams complained to the Commissioner. In a Decision Notice dated 14 July 2021 under reference IC-117876-K9W9 –<https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021165/ic-117876-k9w9.pdf> - the complaint was dismissed. The Commissioner agreed that the report was exempt under s.23(1). While the Commissioner had not been able to view the material due to its government security classification, based on confidential submissions supplied by MPS and the information already in the public domain the Commissioner was satisfied that the withheld information was either supplied by, and/or relates to, one or more of the security bodies listed in s.23(3) of FOIA in its entirety. That being an absolute exemption, there was no need to consider the other exemptions relied upon by MPS. It is against that Decision Notice that Mr Williams appeals.

Legal Framework

7. As confirmed in Information Commissioner v Malnick [2018] UKUT 72 (AAC), on an appeal under s.58 of FOIA the Tribunal may review any finding of fact on which the notice in question was based. This means that the Tribunal exercises a full merits appellate

jurisdiction, making any necessary findings of fact and then deciding for itself whether the provisions of FOIA have been correctly applied.

8. Section 23 provides that any information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3). In Commissioner of the Police of the Metropolis v Information Commissioner & Rosenbaum [2021] UKUT 5 (AAC), at [35], the Upper Tribunal set out fourteen principles arising from the legislation and previous authority. We take careful account of each of them.
9. For the reasons given below, we have concluded that the requested information is exempt by virtue of s.23(1). There is no need to consider the other exemptions relied upon.

Consideration

10. In his grounds of appeal, Mr Williams first complains that the Decision Notice is unlawful due to the Commissioner not having examined the information before reaching its decision. We reject this. On receipt of a complaint under s.50(1), the Commissioner is required to determine whether a public authority has dealt with the relevant information request in accordance with the requirements of Part I of FOIA and, if appropriate, issue a Decision Notice. FOIA imposes no procedural requirements as to how this is undertaken. Nor does the Tribunal have any supervisory role. It is for the Commissioner to decide how best to investigate a particular complaint. On appeal, the Tribunal's full merits jurisdiction enables it to consider any further relevant matter. The investigation that was undertaken will also affect the weight afforded by the Tribunal to the Commissioner's conclusion.
11. We have, in this appeal, considered the report for ourselves. That ensures a proper examination of whether MPS dealt with the request in accordance with the requirements of Part I of FOIA and disposes of this ground of appeal.
12. Mr Williams next complains that MPS did not confirm or deny whether it held the information. This appears to relate to which security body the requested information is said to have been supplied by or relate to. There is no requirement in the statutory scheme that the precise s.23 body concerned be disclosed. We also note the complaint that MPS gave its response after the expiry of the applicable timescale. That delay has already been acknowledged by the Commissioner and does not bear upon the substantive issue of the applicability of the exemption(s) and the proper disposal of this appeal.
13. We turn to the actual task required by the statutory scheme, to determine for ourselves whether the requested information is exempt. In reaching his decision to that effect, the Commissioner referred to information in the public domain confirming that the role of UK and foreign intelligence agencies formed part of the Operation Lydd investigation. This is also made clear in the factual context set out by the Supreme Court above, and it was also noted at [11] that the decision not to bring criminal proceedings was “substantially based on secret material”.
14. MPS has referred to the announcement of 9 June 2016 by the Crown Prosecution Service confirming the decision not to bring criminal proceedings, which includes the following:

In what has been a thorough and painstaking investigation, evidence and information was obtained from a large number of records, individuals and organisations including

the Secret Intelligence Service, the Security Service, other Government Departments and authorities in other countries.

15. MPS does not demur from this statement, which stands as public confirmation that some of the material considered by the report was supplied by the Secret Intelligence Service and the Security Service, both bodies specified in s.23(3).
16. In a letter written to the Commissioner on 23 June 2022, and provided in the open bundle, Detective Sergeant Neil Evans writes the following:

The report focused on information received from these security bodies defined under Section 23 Freedom of Information Act.

The report was compiled by the police investigation team and is a condensed summary of thousands of highly classified documents which have been obtained from security bodies, already mentioned, and includes direct duplication from key documents that support the police case. It will also contain police reference and direct commentary to these documents, which in itself will still maintain the same classification marking. The report is effectively a chronology of events relating to the rendition and subsequent detention of the Libyan Nationals, The events could only be achieved [sic] by documents supplied to the relevant security agencies.

The documents supplied directly by each of the security bodies and police were provided access to all documents. All material obtained related to a security body incorporated within the investigative strategy.

17. We have independently considered the report for ourselves, and entirely agree with this description. It contains information that has clearly been supplied to MPS by a s.23(3) body, and which is therefore exempt. Mr Williams has argued that a copy could be supplied with the information supplied by s.23(3) bodies redacted. We find that the entire report is exempt. As confirmed by DS Evans, the report is a chronology of events identifying the source of information and providing commentary on each. Its function as a report includes enabling the Director of Public Prosecutions to make a decision on whether to bring criminal proceedings, a relevant consideration is whether there would be a realistic prospect of conviction. The report is properly seen as one cohesive document rather than a collection of entries. As might be expected given the underlying subject matter, the contribution of s.23(3) bodies to the report is profound. Where the information it contains is not supplied by such a body, it still plainly 'relates to' it such as to engage the s.23(1) exemption. In reaching that conclusion we apply the eighth and ninth principle in Rosenbaum: the entire content of the report easily satisfies the synonymic phrases of having "some connection" or "that it touches or stands in some relation to".
18. The report is exempt from disclosure pursuant to s.23(1) of FOIA. The Decision Notice's conclusion to that effect was correct in law, and the appeal must be dismissed. It has not been necessary to issue any separate CLOSED reasons, and the above constitutes our entire reasons for dismissing the appeal.

Signed

Date:

Judge Neville

13 November 2023