



**IN THE FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
[INFORMATION RIGHTS]**

EA/2014/0114

ON APPEAL FROM:

Information Commissioner's Decision Notice: FS50519850

Dated: 22 April 2014

Appellant: AHMED KHASHABA

Respondent: THE INFORMATION COMMISSIONER

**Second Respondent: CHIEF CONSTABLE OF LANCASHIRE
CONSTABULARY**

Date of hearing: 16 October 2014

Date of Decision: 31 October 2014

Date of Promulgation: 3rd November 2014

**Before
Alison Lowton
Annabel Pilling (Judge)
Rosalind Tatam**

Subject matter:

FOIA – Whether information is held – section 1(1)

Representation:

For the Appellant: Ahmed Khashaba

For the Respondent: Michele Voznick
For the Second Respondent: Carl Melling

Decision

For the reasons given below, the Tribunal refuses the appeal and upholds the Decision Notice.

Reasons for Decision

Introduction

1. This is an appeal against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 22 April 2014.
2. The Decision Notice relates to a request made by the Appellant under the Freedom of Information Act 2000 (the 'FOIA') to Lancashire Constabulary ('the Constabulary') for information relating to the revocation of firearms licences. The request was made by fax on 28 June 2013. The relevant parts are as follows:

(A) In the last five years how many firearm and/or shot gun licences have been revoked civilly (i.e. not criminal revocation)

....

(B) Sub-classify "A" into white and non-white people. If you don't hold that information (contrary to the equality act 2010) then sub-classify by whether their names sound white (Caucasian) or "foreign" or non-white, e.g. Tom Jones would be likely to be a white man, Ahmed would be likely to be a non white man.

(C) How many on "A" had this civil revocation... recorded onto their PNC...

(D) How many in "B" had their civil revocation recorded onto their PNC.

(E) If the cost of this straightforward job is going to be >£450 or take >20 working days then can you do it for the last 12 months if the numbers are too high. ...”

3. The Constabulary responded on 22 August 2013. It provided the information that in the past five years 104 firearms/shotgun certificates have been revoked within Lancashire and all revocations are recorded on the Police National Computer (PNC) record of the respective individual. The ethnicity of those licence holders is not routinely recorded by the Constabulary; it would not be possible to use the method suggested by the Appellant to guarantee any accuracy in the results.
4. The Appellant requested a review of this decision as he believed that the law required the ethnicity information to be recorded and/or that the police could simply check the colour photograph attached to each licence (and/or the person's name) in order to provide him with the information in respect of whether the 104 holders of the revoked licences were white or non white.
5. The Constabulary conducted the internal review and informed the Appellant of the result on 17 October 2013. Whilst the details of ethnicity were not routinely recorded, further enquiries had revealed that the information was recorded in respect of 23 individuals; 21 white and 2 unknown. It does not hold any information regarding the colour/ethnicity of the other 81 individuals.
6. The Appellant complained to the Commissioner who investigated the way the request had been dealt with by the Constabulary. The Appellant did not accept that information regarding ethnicity was held in only 23 cases as every application required a colour photograph which could be used to determine ethnicity. The Commissioner decided that the Constabulary had disclosed all of the information it holds. He concluded that to undertake the exercise suggested by the Appellant would require the Constabulary to create information, which it is not

required to do under the FOIA.

The appeal to the Tribunal

7. A Decision Notice issued following a complaint to the Commissioner under section 50 of FOIA may only deal with the question of whether or not the request for information has been dealt with in accordance with Part I of FOIA. An appeal to this Tribunal under section 57 of FOIA arises only in relation to findings of such a Decision Notice.
8. All parties agreed that this was a matter that could be dealt with by way of a paper hearing.
9. The Tribunal joined the Constabulary as Second Respondent, although they have not provided any additional submissions.
10. The Tribunal was provided in advance of the hearing with an agreed bundle of material, and written submissions from the parties. We cannot refer to every document and submission but have had regard to all the material when considering the issues before us.

The Issues for the Tribunal

11. The Appellant maintains that he is not asking for the creation of information; the information is already recorded in the person's name and/or in the colour photograph attached to each licence.
12. He also complains that the Commissioner failed to mention the Constabulary's failure to deal with his initial request within 20 days.
13. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.

14. Section 1(4) makes it clear that the obligation under section 1(1) is for information “held at the time when the request is received” and section 84 defines “information” as “information recorded in any form.”
15. The Appellant submits that the information is held, contained within the name and/or the colour photograph; *“It does not take a genius to decipher if a name and a photograph are white, non-white or “unknown”*. The Constabulary’s Operations Services has responsibility for the management and processing of firearms licence. Records for firearms licences are maintained in accordance with national guidelines on disposal and retention; a record of a refusal or revocation would be retained until the individual had reached 100 years of age. At the time of the request, ethnicity details were not requested, or required, for firearms licences. We understand that since the time of this request this position has changed and the provision of ethnicity information is now mandatory.
16. The Commissioner drew our attention to a number of decisions of this Tribunal which addressed the issue of whether information was held. We agree that there is no obligation on a public authority to conduct research, analysis or create new information in response to a request under FOIA. We have considered whether the Appellant is correct in asserting that the information is held, and that the detail of ethnicity only needs to be extracted rather than created. We agree with the Commissioner that this would involve an individual making a subjective assessment as to another’s ethnicity and would be the creation of new information. This would also be likely to amount to a breach of the provisions of the Data Protection Act.
17. In respect of the Commissioner’s failure to make a finding that the Constabulary had breached the statutory time period for responding to the request, the Commissioner submits that he has discretion whether to specifically record a breach of section 10 and, even if a breach had been recorded, there would be no steps required as the Constabulary had sent a response.

18. We do not consider that the Commissioner's failure to record the clear breach of section 10 means that the decision notice is not in accordance with the law and that we should allow the appeal. There would be no practical purpose in doing so.

19. We are satisfied that the Constabulary do not hold information relating to the ethnicity of the 81 individuals whose licences had been revoked.

20. We therefore dismiss the appeal and uphold the decision notice.

31 October 2014