



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Appeal Reference: EA/2017/0066

Decided at Field House Without a Hearing

Before

**JUDGE PETER LANE
ALISON LOWTON
NIGEL WATSON**

Between

TIM PRINCE

Appellant

and

INFORMATION COMMISSIONER (FIRST RESPONDENT)

DEVON COUNTY COUNCIL (SECOND RESPONDENT)

Respondents

DECISION AND REASONS

1. The appellant requested information regarding a specific prosecution undertaken by Devon and Somerset Trading Standards. His request referred to a named person who appeared at Exeter Crown Court in 2015 to face a charge brought by Devon and

Somerset Trading Standards. The appellant wanted copies of all the meeting minutes, decision and/or action logs, and all e-mails sent by and/or received by the person prosecuted, relating to the investigation. He also asked for performance targets that were in place in relation to the investigation.

2. The first respondent decided that the requested information was exempt from disclosure by reason of section 30(1) of the Freedom of Information Act 2000 and the fact that the public interest test in section 2(2)(b) of the Act, as applied to the circumstances of the request, resulted in the public interest in favour of withholding the information outweighing the public interest in favour of its disclosure.
3. Section 30(1) provides that:-
 - “(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of -
 - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained -
 - (i) whether a person should be charged with an offence
 - (ii) whether a person charged with an offence is guilty of it”.
4. The second respondent explained that the withheld information related to an investigation conducted by the Devon and Somerset Trading Standards Service to establish whether the owners of a garage in Exeter were guilty of offences under consumer protection legislation, including the Consumer Protection from Unfair Trading Regulations 2008 and the General Product Safety Regulations 2005. The second respondent submitted that the information constituted correspondence entered into by the investigating officer as part of this investigation and internal departmental records. Wherever the material met the test of “relevancy” under the Criminal Procedures and Investigations Act, the existence of the material was disclosed to the defence in the criminal proceedings as “unused material”. This was required as part of the prosecution’s duty of disclosure. Since, however, the material was not otherwise dealt with in court, its contents were not a matter of public record.
5. Regulation 19 of the 2008 Regulations imposes a duty on the relevant authority to enforce the relevant trading standards legislation. Accordingly, the first respondent contends that the “duty” requirement in section 30(1)(a) is satisfied.
6. That contention seems to the Tribunal to be unarguably right. The appellant has not sought to challenge it.
7. Furthermore, we agree with the first respondent that the phrase “at any time” in section 30(1) means that section 30(1)(a) applies, whether or not the investigation in question was complete at the time of the request. Section 30(1)(a) is in the nature of a “class-based” exemption. This means that it is not necessary for the second

respondent to demonstrate that the disclosure would prejudice any particular interest, in order to engage the exception.

8. The issue, accordingly, is whether the public interest favours disclosure. The public interest in favour of withholding the information must be greater than the interest in favour of disclosure, in order to prevail.
9. The case in favour of disclosure is, in essence, as follows. There is a public interest in promoting openness and transparency in the discharge of the statutory functions of a trading standards department. In this way, the public can see that investigations have been properly undertaken. In addition, the appellant contended that, as a tax payer, he wished to be able to scrutinise the way in which the second respondent had conducted itself in this particular case.
10. As against that, there is a plain public interest in ensuring that offences are effectively investigated and, if appropriate, prosecuted. Revealing information that might enable offenders to deduce investigation methodologies would be to the detriment of future investigations. Officers carrying out a criminal investigation should not be discouraged from placing correspondence in writing out of a fear that it would be disclosed in response to an FOIA request.
11. In striking the balance, the first respondent accepted the point that, once criminal proceedings had been concluded, the public interest in maintaining the exemption may wane. However, the first respondent did not consider that the information necessarily lost its relevance, owing to the conclusion of the investigation. There was, she thought, always the possibility that the status of an investigation could change over time and the information had the potential of becoming relevant again.
12. Since the withheld information extended further than the material used in court, it was not a matter of public record and the first respondent agreed with the appellant that disclosure would add to the public's understanding of the actions of Devon and Somerset Trading Standards. On the other hand, general information relating to the methods engaged by Devon and Somerset Trading Standards in seeking compliance with relevant legislation is in the public domain, since it is on the authority's website.
13. The first respondent's conclusion was that there was considerable public interest in matters, such as the sale of an unsafe vehicle being investigated thoroughly and efficiently, ensuring that the best evidence was available to the second respondent to inform its decisions. It was important for public confidence in the activities of the second respondent that its ability to discharge its statutory functions should be effective and unimpeded. Although the first respondent accepted that disclosure would hold the second respondent to account for this particular investigation, she had not been made aware of any allegations of wrongdoing in this case.
14. Accordingly, the first respondent concluded that the public interest lay in favour of withholding the information.

15. The appellant appealed against this decision to the Tribunal. He submitted that one of the two charges brought against the defendants did not lead to conviction. Furthermore, some eighteen months had now passed since the conclusion of the investigation. The grounds also alleged that “the inspection of the vehicle by Devon and Somerset Trading Standards was carried out incorrectly and arguably dishonestly by an independent expert who I strongly suspect was in fact far from independent. This could well amount to perjury. The nature of e-mail interactions between him and the lead trading standards officer could very well substantiate this concern and possibly evidence the commission of a criminal offence. I believe the lead trading standards officer deliberately supplied his head of service with inaccurate and incorrect information”.
16. Both sides were content for the appeal to be determined without a hearing and, in all the circumstances, we are satisfied that we can justly do so. In reaching our decision, which is unanimous, we have considered all the evidence and submissions contained in the appeal bundle.
17. We are entirely unsatisfied that the balance of the public interest falls to be struck differently from the way in which the first respondent did so. It is clear from the words “at any time” in section 30(1) that the legislator was keenly aware of the fact that the exemption should still be available, even after relevant investigations have ended. The reason for this is obvious. Not only is the first respondent right to point out that the conclusion of an investigation may not signal that no such investigation might resume in the future. More importantly, disclosing the inner workings of authorities such as Devon and Somerset Trading Standards would be likely to give actual or potential unscrupulous traders an insight that they could use to evade prosecution or render investigation and prosecution more difficult. This would plainly not be in the public interest.
18. The grounds of appeal make serious allegations regarding persons concerned in the particular investigation with which the appellant is concerned. In order to tip the balance in favour of disclosure, there needs to be some objective basis for these allegations. The appellant has put forward none. As the first respondent pointed out in her response, there may be a number of reasons why one charge was unsuccessfully prosecuted. It is irrational to contend that, because the charge was dismissed, the second respondent acted malevolently and dishonestly in bringing it. Were there anything in that contention, we would have expected to see relevant submissions being made to the court. So far as we are aware, none were made. Furthermore, the appellant has not shown that the unsuccessful charge was dismissed on the basis of the defendant having no case to answer.
19. We have examined the closed material. We can confirm that we found nothing in it to begin to substantiate (or otherwise lead credence to) the appellant’s allegations of misconduct.

20. So far as timescale is concerned, the public interest must be judged at the point in time when the second respondent made its decision, on review, not to disclose the information. The prosecution had taken place in October 2015. The respondent's refusal occurred in February 2016, only three months later. The appellant's reference to eighteen months having elapsed is, accordingly, irrelevant for the purposes of this appeal.
21. The public interest lies in favour of withholding the disclosed information. This appeal is accordingly dismissed.

Judge Lane

Date of Decision: 23 November 2017
Promulgated: 24 November 2017