



Case Reference: EA/2022/0216
Neutral Citation Number: [2023] UKFTT 820 (GRC)

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

Heard by: determination on the papers

**Heard on: 5 May 2023
Decision given on: 03 October 2023**

Before

**TRIBUNAL JUDGE STEPHEN ROPER
TRIBUNAL MEMBER AIMÉE GASSTON
TRIBUNAL MEMBER PAUL TAYLOR**

Between

ALISTAIR BLACKBURN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is Allowed

Substituted Decision Notice:

The Tribunal's Decision Notice in case reference EA/2022/0216, set out below, is substituted for the Commissioner's Decision Notice reference IC-132068-D7H3 dated 21 July 2022 with regard to the request for information made to The Royal Mint by Alistair Blackburn dated 19 June 2021.

Substituted Decision Notice

1. The Royal Mint must reconsider its analysis of the request for information in light of the Tribunal's Decision in case reference EA/2022/0216 and must make a fresh response to the request for information.
2. Unless the duty to confirm or deny does not arise in accordance with any applicable

The Royal Mint held no recorded information within the scope of the Request. The Decision Notice did not require The Royal Mint to take any steps.

5. We consider that it is important to stress what is outside of the scope of the appeal. The appeal is not concerned with the merits of The Royal Mint's policies. The appeal also does not relate to any allegations relating to the conduct or activities of The Royal Mint or any individuals working for The Royal Mint (other than in respect of its duties under FOIA). The Tribunal has no power to determine those issues and nothing we say should be interpreted as an expression of opinion on any of those issues. The remit of the Tribunal is limited to that set out in section 58 of FOIA, having regard to the applicable law, as we explain below.

Mode of Hearing

6. The parties consented to the appeal being determined by the Tribunal on the papers.
7. The Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of the Tribunal Rules and was satisfied that it was fair and just to conduct the hearing in this way.

Background to the appeal

8. The background to the appeal is as follows.

The Request

9. On 19 June 2021, the Appellant contacted The Royal Mint requesting information in the following terms:

"Please describe fully the Royal Mint's current policy on accepting the bulk repatriation of UK coinage from outside UK, including all denominations, and the effective date of this policy."

The Royal Mint's reply and subsequent review

10. The Royal Mint responded on 16 July 2021, stating that its policies were updated in September 2019 to reflect that it no longer accepts the return of coins from outside the UK banking system and that this included any overseas coin return deposited via the UK banking system.
11. The Appellant wrote to The Royal Mint on 22 July 2021 asking for an internal review. He stated that the response was "*devoid of any detail*" and that it did not explain what had happened to the coins that continue to be imported from outside the UK and deposited into the UK banking system.
12. Following an internal review, The Royal Mint responded on 17 September 2021 and maintained its original position. It also provided some information in respect of queries raised by the Appellant when he requested the internal review.
13. The Appellant contacted the Commissioner on 28 September 2021 to complain about The Royal Mint's response to the Request. The Appellant stated that he disagreed that The Royal Mint did not hold the Requested Information or that he believed that The Royal Mint held more information than it sent in response to the Request.

The Decision Notice

14. The Commissioner stated that the scope of his investigation was to consider whether, on the balance of probabilities, The Royal Mint held any information within the scope of the Request.
15. The Commissioner noted in the Decision Notice that:
 - a. the Appellant had explained that since 2019 retail outlets had refused to take current and old UK coins as The Royal Mint will no longer accept them and that this has severely affected the Appellant's business;
 - b. the Appellant believed that The Royal Mint should provide clear and detailed guidance on which banks and post offices will accept current and past coins and that this "*should be freely available and updated as coins enter and exit circulation*";
 - c. The Royal Mint had explained that:
 - its policies were amended in September 2019 to no longer accept the return of coins from outside the UK banking system and that this included any overseas coin returns deposited via the UK banking system;
 - it has an objective to maintain public confidence in UK coinage and to "*protect the integrity of the currency by removing coins which are deemed no longer fit for circulation through general wear and tear*"; and
 - the policy applied to current circulating denominations of UK coins and demonetised UK coin;
 - d. The Royal Mint had provided further information to the Appellant in response to questions he asked as part of his request for an internal review.
16. The Commissioner stated in the Decision Notice that he accepted that The Royal Mint had changed its policy in 2019 to no longer accept the repatriation of UK coinage from outside UK.
17. The Commissioner decided, by way of the Decision Notice, that The Royal Mint did not hold information within the scope of the Request.

The appeal

18. The Decision Notice was given in response to the Appellant's complaint to the Commissioner relating to The Royal Mint's response to the Request, made under section 50 of FOIA. This was an appeal against the Decision Notice made by the Appellant pursuant to section 57 of FOIA.

Grounds of appeal

19. In his grounds of appeal, the Appellant challenged the Decision Notice on the basis that The Royal Mint had indeed published a detailed damaged/garbled coin policy on 13 September 2019, but had not made it available to the general public.
20. The Appellant also stated in his grounds of appeal that (in summary):

- a. as The Royal Mint was the monopoly manufacturer of coins, all policies about its coins should be publicly available;
- b. most other central banks in Europe publish a detailed coin redemption policy, whereas The Royal Mint's published policy amounts to nine lines and was causing widespread confusion within the banks and the post offices;
- c. he was aware of (and had a copy of) The Royal Mint's 'Garbled Coin Policy' but this was marked 'confidential'; and
- d. there were witnesses who could testify that they were significantly affected by The Royal Mint's new policy and had never been advised of the policy in full, despite requesting it.

The Commissioner's response

21. In his response to the appeal, the Commissioner submitted that the Appellant's grounds of appeal had failed to set out any cogent argument as to why the Decision Notice was not in accordance with the law and/or why the Commissioner ought to have exercised any discretion differently. The Commissioner generally relied on the reasons given in the Decision Notice in support of his view that the appeal should be dismissed.
22. The Commissioner's response stated that the Request "*asked The Royal Mint to 'describe' its garbled coin policy, including the valid date*" and (by way of footnote) that "*It is noted that the request does not request, for instance, all information about the policy or for a copy of the current policy*". The Commissioner noted that The Royal Mint provided information, describing the policy, to the Appellant in its response dated 17 September 2021 and responded to the Appellant's questions which he raised when requesting an internal review.
23. The Commissioner considered that the only issue in the appeal was whether, at the time of the Request, The Royal Mint held other information within the scope of the Request. The Commissioner's position was that, on the balance of probabilities, The Royal Mint did not hold any further information which fell within the scope of the Request.
24. The Commissioner explained that he had reviewed The Royal Mint's website and that information about the policy was available online, as well as details of how to submit requests for information to The Royal Mint. Details of these were included in the bundle.

The Tribunal's powers and role

25. The powers of the Tribunal in determining the appeal are set out in section 58 of FOIA, as follows:

"(1) If on an appeal under section 57 the Tribunal considers –

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."

26. For the purposes of the appeal, therefore, the Tribunal's remit is to consider whether the Decision Notice was in accordance with the law, or whether any applicable exercise of discretion by the Commissioner in respect of the Decision Notice should have been exercised differently. In reaching its decision, the Tribunal may review any findings of fact on which the Decision Notice was based and the Tribunal may come to a different decision regarding those facts.

The law

The relevant statutory framework

27. Section 1(1) of FOIA provides a general right of access to information held by public authorities. It provides:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

28. In essence, under section 1(1) of FOIA, a person who has requested information from a public authority (such as The Royal Mint) is entitled to be informed in writing whether it holds that information. If the public authority does hold the requested information, that person is entitled to have that information communicated to them. However, these entitlements are subject to the other provisions of FOIA, including some exemptions and qualifications which may apply even if the requested information is held by the public authority.

Relevant case law

29. It is important to note that, notwithstanding section 1(1) of FOIA, it is not the role of either the Commissioner or the Tribunal to determine conclusively (or, in other words, with certainty) whether or not information is actually held by a public authority for the purposes of that section.

30. In the case of *Bromley v Information Commissioner & the Environment Agency*¹, the First-tier Tribunal held that: *"the test to be applied [by the Commissioner and the Tribunal] was not certainty but the balance of probabilities"*. In simple terms, the 'balance of probabilities' means that something is more likely than not to be the case. The decision in the *Bromley* case is not binding on this Tribunal, but we note that this test has become established and a similar approach has been taken in numerous Tribunal decisions since. We see no reason to depart from that view.

31. Accordingly, in determining whether or not information is held on the balance of

¹ EA/2006/0072, paragraph 13

probabilities, a decision will be reached based on an assessment of the adequacy of the public authority's search for the information and any other reasons explaining why the information is not held.

Evidence

32. The Tribunal read and took account of an open bundle of evidence and pleadings. The Tribunal also read and took account of additional documents which were provided by the Appellant comprising a copy of the 'Garbled Coin Policy' (referred to in paragraph 20.c) and three witness statements (the Appellant being one of the witnesses).

Discussion and conclusions

Outline of relevant issues

33. The fundamental issue which we needed to determine in the appeal was whether or not the Commissioner was correct to decide, by way of the Decision Notice, that on the balance of probabilities, The Royal Mint held no relevant information relating to the Request when it was made.

Analysis and discussion; application of the law

34. As we have noted:
- a. section 1(1) of FOIA provides a general right of access to information held by public authorities, if it is held by the public authority when the request for information is received (accordingly, there is no right to information which is not held when an applicant's request is received); and
 - b. in accordance with the test in the case of *Bromley*, where the Commissioner or the Tribunal is faced with a dispute regarding whether information is held by a public authority, the test to be applied is the balance of probabilities.
35. The starting point, however, is to ascertain what was actually requested in a request for information – or, in other words, what was within the scope of that request.
36. As we noted in paragraph 22, the Commissioner stated that the Appellant had asked for The Royal Mint to “describe” its policy. That description of the Request is not entirely accurate. The Request asked for The Royal Mint to “describe fully” its policy. That distinction is important. In this instance, the fact that the Request asked for the policy to be described fully means that it was clear that the Appellant was seeking full details of the policy. Sometimes, the best way to provide a full description of a policy is to simply provide a copy of the policy itself. That is what we consider should have happened in respect of the Request.
37. It is noteworthy that the Appellant complained to The Royal Mint that its initial response to the Request was “devoid of any detail”. This reinforces the point that the Appellant was seeking full details of the policy. This particular aspect of the complaint (and potentially the appeal itself) could have been avoided had The Royal Mint just provided the Appellant with a copy of the relevant policy.
38. We also do not agree with the Commissioner's view (referred to in paragraph 22) that the Request did not ask for “all information about the policy”. Again, the Request asked

for a full description of the policy, which is tantamount to asking for all information about the policy. We do concur with the Commissioner's statement that the Request did not specifically ask for copy of the current policy. However, it did ask for a full description of it and, as we have noted, we think that the best way to have done that would have been to provide a copy of the policy itself.

39. Whilst we consider that the Request was clear in its requirements, we note that The Royal Mint did not, in any event, seek to clarify the scope of the Request. This is so notwithstanding the fact that the Appellant complained, in requesting an internal review, that The Royal Mint's initial response to the Request was "*devoid of any detail*". If The Royal Mint was in any doubt regarding what was being sought, it may have been appropriate for The Royal Mint (pursuant to its duties under section 16 of FOIA) to seek to ascertain the exact scope of the Request.
40. We also note that there appears to have been a policy in existence at the time of the Request which is different to that found by the Commissioner on The Royal Mint's website (as referred to in paragraph 24); namely, the 'Garbled Coin Policy' which the Appellant provided in connection with the appeal, which he asserted was the relevant policy in question but which was not publicly available. We do not know in what circumstances that policy was obtained by the Appellant but we are mindful of our wide discretion to accept evidence pursuant to rule 15(2)(a) of the Tribunal Rules. We are not making any finding that that is the policy which was the subject of the Request. However, we consider that it is sufficient evidence to demonstrate that a policy may be in existence within the scope of the Request but which was not provided to the Appellant in response to the Request.
41. It follows from the above that we consider, on the balance of probabilities, that further information is held by The Royal Mint which falls within the scope of the Request.
42. We recognise that The Royal Mint, as a result of its internal review, did provide other information to the Appellant in response to the questions he raised when asking for an internal review. However, that is not the same as responding in full to the Request itself, of course.
43. We would also briefly note that we did not consider the witness statements provided by the Appellant to be material in the context of the appeal. This is partly because they referred to wider issues relating to the conduct of The Royal Mint or other information relating to matters which are outside of the scope of the appeal (as outlined in paragraphs 25 and 26) but also because they did not add anything material to the other evidence which was before us. As we have noted, the fundamental issue in the appeal was the scope of the Request and the question of whether, on the balance of probabilities, The Royal Mint held information within its scope.

Final conclusions

44. For all of the reasons we have given, we conclude as follows.
45. We find that the Commissioner erred in the exercise of his discretion and/or the Decision Notice involved an error of law in concluding that, on the balance of probabilities, no further information was held by The Royal Mint within the scope of the Request.

46. We therefore allow the appeal and we make the Substituted Decision Notice as set out above.

Signed: Stephen Roper
Judge of the First-tier Tribunal

Date: 29 September 2023

Promulgated:

Date: 03 October 2023