



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2011/0153

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50382415
Dated: 14 July 2011

Appellant: TREVOR PECKHAM-COOPER
Respondent: INFORMATION COMMISSIONER
Second Respondent: KENT POLICE

On the papers at Field House
Monday 24 October 2011

Date of decision: Monday 14 November 2011

Before

Robin Callender Smith
Judge

and

Gareth Jones
Marion Saunders
Tribunal Members

Representation:

For the Appellant: Trevor Peckham-Cooper
For the Respondent: Christopher Knight, Counsel instructed on behalf of the
Information Commissioner
For the Additional Party: Giovanni Cacciaccaro, FOIA Advisor for Kent Police

**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2011/0153

Subject matter:

FOIA

Whether information held s.1

Cases: *Bromley v Information Commissioner & the Environmental Agency*
(EA/2006/0072).

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 14 July 2011 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Peckham-Cooper's ("the Appellant"'s) wife suffered a fatal road traffic accident on 9 December 2002. Kent Police ("the Second Respondent") dealt with the investigation into how the accident happened.
2. There was litigation about the circumstances surrounding the accident in which reliance was placed upon an accident mapping system used by Kent Police. The Appellant believes that system incorrectly positioned his wife's vehicle.

The request for information

3. On 29 October 2010 the Appellant made a request under the Freedom of Information Act 2000 ("FOIA") in writing to the Second Respondent. He requested details relating to the computer system used at the time of the accident in December 2002. In an e-mail dated 6 November 2010 he specified that the information sought included the date the computer system was commissioned and decommissioned by the Second Respondent.

4. The Second Respondent replied on 11 November 2010. It stated that the mapping system used at the time was SDR Map and stated further:

Unfortunately it is unknown when the system was first used, however, we understand that it pre-dated 2001. The system worked as follows. The scene would be surveyed using a theodolite to plot points. The points were converted by the SDR Map system to produce lines and symbols. The centre white line would have been drawn as a pattern line. Where the line was curved, the system would generate a best-fit curve. The line itself would not be used in order to take measurements. Any anomalies in the plan would be addressed and rectified in the crash investigator's report. SDR Map ceased to be used during 2004 as a result of the change in computers used generally by Kent Police, not as a result of any shortcomings in SDR Map. The system currently used is called Geosite.

5. The Appellant requested contact details of SDR. The Second Respondent – on 15 November 2010 – told him that enquiries had been made with all the relevant departments but that Kent Police no longer had any documentation or links to SDR Map Systems and could not provide the contact details requested.

6. The Appellant queried this response but the second Respondent reiterated that it did not hold any further information that was relevant to his request. It also stated that SDR was a system being used in 2002. The Appellant expressly challenged the position that the Second

Respondent held no information. He argued that the Second Respondent had

confirmed to me that the KP did use this system to map accidents and that it was only decommissioned a short while ago therefore it is logical that records would exist regarding the software.

The complaint to the Information Commissioner

7. The Appellant complained to the Information Commissioner ("IC") in December 2010. The IC confirmed with the Appellant that the Appellant wished him to consider whether or not Kent Police did still hold any information about the SDR Map system. The Appellant confirmed that was correct.

The appeal to the Tribunal

8. The Appellant, in his Notice of Appeal, sets out the background of his dealings with the Second Respondent but does not elaborate on why he considers the IC's decision to be flawed.

The questions for the Tribunal

9. The Tribunal has to decide whether the IC's decision that the Second Respondent no longer held any relevant information was, on the balance of probabilities, correct.

Evidence

10. The Tribunal has been assisted by the extensive correspondence in respect of this matter disclosed by the Second Respondent in an open bundle totalling 199 pages, a copy of which was sent to the Appellant who had agreed to the Appeal being determined on the papers before the Tribunal.

Conclusion and remedy

11. It is clear from the correspondence audit trail, provided by the Second Respondent and considered by the Tribunal and the IC, that there has been a thorough search by the Second Respondent for the information requested by the Appellant. The locations searched are identified and appear to the Tribunal to be those where the information – if held at all – would be located.

12. There has been a significant passage of time between the system being discontinued and the original request being made. The IC's Decision Notice concluded that, on the balance of probabilities, the information was not held.

13. The IC reached that conclusion because:

- The correct test of whether information was held was on the Balance of Probabilities;
- The Second Respondent had explained to the IC that it had obtained the description of SDR from a serving officer in the relevant department. It confirmed that it had contacted other relevant departments who had been unable to supply any further relevant information;
- The Second Respondent provided to the IC an audit trail of copies of correspondence with other departments. That correspondence confirmed that the Second Respondent had generally updated its computers in 2004 – 2005 and that SDR was not compatible with those upgrades. Contract information was usually held for the duration of the contract – normally three years – plus an additional year; and
- The IC concluded that the Second Respondent had contacted the relevant departments who might be expected to hold the information, that off-style storage had been checked and that the normal period for the retention of that type of document had

passed. On the balance of probabilities the requested information was not held.

14. The Tribunal considers this process and the enquiries by the IC correctly supported the conclusion that the information was not held by the Second Respondent. The Second Respondent's approach to this appeal demonstrated an openness and transparency which further supports the IC's conclusion

15. For all these reasons the Tribunal is satisfied, to the required standard, that the appeal must fail because the Appellant has been unable to present any evidence or information to dislodge the Second Respondent's contention that the information is no longer held.

16. Our decision is unanimous.

Robin Callender Smith

Judge

14 November 2011