



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

**Appeal No: EA/2013/0210**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50498227  
Dated: 2 September 2013**

**Appellant: Charles Stuart  
Respondent: The Information Commissioner**

**Heard at: Pocock St, London SE1  
Date of Hearing: 18 February 2014**

**Before  
Chris Hughes  
Judge  
and  
Roger Creedon and Narendra Makenji  
Tribunal Members**

**Date of Decision: 7<sup>th</sup> March 2014  
Date of Promulgation: 10<sup>th</sup> March 2014**

**Attendances:**

For the Appellant:           in person  
For the Respondent:         no appearance

**Subject matter:**

Freedom of Information Act 2000  
Data Protection Act 1998

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 2 September 2013 and dismisses the appeal.

Dated this 7<sup>th</sup> day of March 2014

Judge Hughes

[Signed on original]

## REASONS FOR DECISION

### Introduction

1. Mr Stuart served in the RAF. While he was stationed in Belize in 1991 he sustained an injury and he subsequently received treatment. He was discharged from the RAF in 1995. He raised a grievance about the treatment he had received. He subsequently brought a claim against his former employers which was settled in August 2004. As part of that settlement he agreed not to make further claims against the MoD in relation to the incident.
2. Since the settlement of his claim he has continued to pursue issues concerning the treatment he received for his injury including making a number of requests for information. His MP exchanged correspondence with MoD Ministers and secured an Adjournment Debate in the House of Commons.

### The request for information

3. On 3 January 2013 Mr Stuart wrote to the MoD requesting information :-  
*“3. is it RAF policy past and present that when DGMS (RAF) examines medical negligence cases a written signed report/signal is expected from DGMS to pass on his conclusion to ministers and to airmen who have involved a Member of Parliament to begin a Parliamentary Enquiry on the subject ? If not, how would DGMS (RAF) convey his opinion to Roger Freeman to sign on the 11/11/94?*  
*4. in the light of the oversight I have outlined in paragraph 2 on page one, could there be any more evidence on record within the Ministry of Defence that MoD had failed to disclose to me about this case, especially from Air Marshall Sir John Baird DGMS (RAF) and his staff officers or any other evidence that is not contained in the file currently with Minister Andrew Robathan MP department”*
4. On 1 February 2013 the MoD stated that it did not hold the requested information. Following an internal review on 3 April 2013 it explained that while FOIA gave the right of access to information it did not oblige the public authority to answer questions, provide explanations or give their opinions. With respect to request (4) it confirmed that Mr Stuart had supplied all the information within scope of the request

to the MoD and it was therefore reasonably accessible to him. Subsequently the Department stated that adequate searches had been undertaken to find any records which would fall within the scope of his request. Mr Stuart complained to the Commissioner on 15 May 2013 who conducted an investigation.

The complaint to the Information Commissioner

5. The MoD explained to the Commissioner that it had interpreted request 3 as seeking to know whether the MoD had a record of a policy or procedure which it followed in 1994 when the Director General of Medical Services (DGMS)(RAF) provided a report about a medical negligence claim to a Minister. The Department said that the procedure for dealing with cases of alleged medical negligence was contained in Queen's Regulations and the relevant extract was provided to Mr Stuart in 2007. The MoD also identified an internal policy document derived from the Regulations for dealing with claims against the MoD. Although in the view of the MoD this was not within the scope of the request it had been disclosed to Mr Stuart. Mr Stuart was also subsequently provided with a document which set out the process for the handling of ministerial correspondence on service personnel matters although again it was not regarded as being within scope. The MoD viewed the information request as containing an implicit question "Is it RAF policy that DGMS (RAF) has to pass his written conclusions about a medical negligence case to Ministers?" and the MoD confirmed that there was no such policy. The MoD gave details of its service records retention policy and confirmed that Mr Stuart had already been provided with all the information still held by MoD concerning his service. The file provided to the Minister in request 4 was material supplied by Mr Stuart and no further information had been generated.
6. In his decision the Commissioner concluded that there were no documents falling within the scope of request 3 and that the internal policy document identified by the MoD "would only be within scope if the complainant's erroneous understanding of the DGMS' involvement had been accurate".
7. The Commissioner considered request 4 and concluded that in essence it was a request meaning:- "Does the MoD hold any other information related to my case beyond what I have already received?" (DN paragraph 25). He noted that FOIA did

not give individuals right to access information which was their own personal data. This should be sought under the Data Protection Act. He concluded that since this was a FOIA request the MoD should have refused to confirm or deny whether it held the personal data sought.

8. The Commissioner concluded by noting that he understood that Mr Stuart had concerns about how the MoD had dealt with his medical matters. However he advised Mr Stuart that the wording of his requests was counterproductive and should have been more clear and specific.

#### The appeal to the Tribunal

9. In his Grounds of Appeal Mr Stuart raised various issues and argued that “secretariat papers and DGMS (RAF) papers in file archives need to be searched, I see no proof that this has been carried out.”
10. Mr Stuart had previously applied to the Tribunal for a direction that four named individuals attend the hearing. The Chamber President rejected this application on the grounds that it was disproportionate. The application was renewed before the Tribunal at the hearing of 18 February. The Tribunal noted that the individuals had had some role in the MoD in 1994 at the time a letter was written by a MoD Minister to Mr Stuart’s MP. Mr Stuart had attempted to correspond with the individuals concerned.
11. The letters he wrote to all four of them were detailed. In one he doubted the veracity of the recipient, in another he wrote about “*my concerns about you putting me at risk.*” A third letter listed a number of queries which Mr Stuart stated would be at issue in the Tribunal including:- “*I did not give consent for my medical records..... Please state why this was allowed to happen on your watch, you must have known this was against medical rules.*”
12. The fourth individual responded:-  
  
“*I reiterate once more that I have no recollection of your case from my time as DGMS (RAF). Until I received your original letter in April 2012 I had no knowledge about you nor any of the other persons mentioned in your communication. With this in mind it is virtually impossible for me to answer your specific questions, particularly after twenty years.*”

13. The Tribunal reminded itself that the issue before the Tribunal was, as the Registrar had explained to Mr Stuart in a Case Management Note:-
- “1. This appeal is against the Information Commissioner’s finding that, on the balance of probabilities, the Ministry of Defence did not hold any further information in scope of Mr Stuart’s requests called “request 3” and “request 4””*
14. The Tribunal noted that the issues which Mr Stuart had stated to recipients of his letters would be at issue in the Tribunal hearing were not within the scope of the hearing. The matters which Mr Stuart wished to put to the four individuals would not help the Tribunal decide that matter, rather they appeared to be challenges to the integrity and conduct of the individuals concerned. This seemed to the Tribunal to be an abuse of the Tribunal process. The Tribunal had no doubt that the previous decisions of the Registrar and the Presiding Judge were correct. The Tribunal therefore declined to order the attendance of the four individuals
15. In his appeal Mr Stuart stated his grounds of appeal with clarity. He acknowledged that he had a copy of the relevant Queen’s Regulations but he felt that there should be more and he stated that he was not entirely convinced the MoD was being honest. He was convinced that there had been a decision by DGMS about his case and *“there may have been a document on file, or just a phone call.”*
16. Mr Stuart explained that *“I always felt that there was an injustice in handling my complaint of medical negligence... It appears to me my rights under Queen’s Regulations have been denied.... There was a cover up. There was collusion... possible criminality. I am just trying to find the truth.”*

#### Analysis and Conclusion

17. The MoD had provided the Information Commissioner with details of the searches it had carried out and the information (including his personal records) which the MoD had supplied to Mr Stuart over the course of time. Mr Stuart continues to be aggrieved by events which took place 20 years ago. Although he has settled his compensation claims he is continuing to ask questions, largely focussed on a letter about his case written to his MP by the relevant Minister in 1994 which set out the view of the DGMS(RAF) on the complaint raised by Mr Stuart .It appears to the Tribunal that he is seeking to understand how matters were handled in his own

particular case although he framed his request in terms of policy documents which would, of course, be of general application. However the Tribunal reminds itself that the function of FOIA is for public bodies to disclose information which they hold – that is the contents of documents in their possession, it is not required to provide explanations or speculate as to what may have happened.

18. The role of the Commissioner is to review the handling of the request and, in a case such as this determine whether the public body is correct in stating that it does not hold the information requested. As the Commissioner noted in his reply he:- *“is not in a position to speculate further on factual matters”* relating to events 20 years ago. In his appeal Mr Stuart has expressed his concerns about how he was treated but he has been unable to produce any evidence to support his claim that material disclosable under FOIA as a result of his requests actually exists within the MoD.
19. It is clear that request 3 is for policy documents. The relevant extract from Queen’s Regulations dealing with ‘Procedure in Cases of Alleged Failure in the Provision of Clinical Care’ has been supplied to Mr Stuart and the MoD is not aware of any other material matching the request – although it has supplied further documents which do not fall directly within the scope of the request but are suggested by it. The information sought by request 4 is for personal information falling within the DPA. Such material is disclosable in response to a subject access request under DPA. All material still held by the MoD in 2009 was then disclosed. Mr Stuart has now made another subject access request.
20. The Tribunal was satisfied that the MoD had conducted adequate searches and the Commissioner had correctly analysed the evidence and issues. There was no error in law in the Commissioner’s reasoning and no sufficient challenge to the facts upon which he based his conclusions.
21. The Tribunal accordingly upholds the decision notice and dismisses the appeal.
22. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 7 March 2014