



Appeal number: EA/2017/0179

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

Mr V SATHYASEELAN

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Determined on the papers, the Tribunal sitting in Chambers on 5 December 2017

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DECISION

1. The appeal is dismissed.

REASONS

Background to Appeal

2. The Appellant made a request to the Ministry of Defence on 16 September 2015 for:

“...the details from the MOD Civilian Personnel records of my late father ...in British naval base in British Singapore”.

3. The MOD replied that it had been unable to locate any records relating to the Appellant’s late father. It explained that he may have been a locally engaged civilian or employed by/transferred to another Government Department.

4. There were some regrettable delays by MOD in dealing with the request, with the result that the outcome on the MOD’s internal review was only notified to the Appellant in October 2016. The Appellant complained to the Information Commissioner.

5. The Respondent issued Decision Notice FS50617162 on 4 July 2017, accepting MOD’s case that on the balance of probabilities no information was held and requiring no steps to be taken. The Appellant appealed to the Tribunal.

Appeal to the Tribunal

6. The Appellant’s Notice of Appeal dated 10 August 2017 submits that the Information Commissioner was wrong to accept the evidence from MOD that it did not hold information within the scope of the request. He supplied documentation confirming his late father’s employment prior to 1968.

7. The Respondent’s Response dated 22 September 2017 maintained the analysis as set out in the Decision Notice. It was submitted that, whilst none of the searches resulted in the requested information being located, the Information Commissioner was satisfied that the MOD had carried out all reasonable searches and, on the balance of probabilities, that it did not hold the requested information.

8. The Appellant’s Reply (termed “final submission”) dated 16 October 2017 describes the Information Commissioner’s Decision Notice as “incorrect, illegal, improper and irregular”. It is clear that the Appellant does not accept the Information Commissioner’s findings of fact and he asks the Tribunal to reach a different conclusion on the evidence.

Mode of Determination

9. This appeal was directed to be determined by a Judge sitting alone, pursuant to paragraph 11 (3)(a)(i) of the Senior President of Tribunals' Practice Statement dated 27 February 2015.

10. As the parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, I have determined it without a hearing. I have considered an agreed open bundle of evidence comprising some 150 pages, including submissions made by both parties, for which I am grateful.

The Law

11. Section 1 (1) (a) of the Freedom of Information Act 2000 entitles a person to be informed in writing by a public authority whether it holds information of the description specified in the request.

12. Section 50 (1) of that Act entitles a person who is dissatisfied with a public authority's response under s. 1 (1) (a) to complain to the Information Commissioner.

13. Section 57 of that Act allows an appeal to be made the Tribunal. The powers of the Tribunal in determining such an appeal are set out in s.58, as follows:

“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.

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

14. The burden of proof in satisfying the Tribunal that the Commissioner's decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

Conclusion

15. I note that the Appellant has produced documentation including his late father's identity card number, correspondence with the Redundancy Payments Fund, and a certificate of termination of employment dated 1968 (headed "Ministry of Public

Building and Works”). It is clear that his late father worked at the British naval base in Singapore but less clear which Government Department employed him.

16. I also note that MOD told the Information Commissioner it had consulted all relevant business units, including Naval Command, DBS, and the TNT archive at Swadlincote. Also, that it had searched the civilian archive record books, the Defence Business Services electronic personal records, and the civilian employee microfiche held at Plymouth Naval Base. These searches were carried out using the surname, date of birth and the identity card number provided by the Appellant. No records of the Appellant’s late father were found.

17. I further note that MOD explained to the Appellant in its letter of 5 October 2016 that there had been a Ministry of Public Building and Works until 1970, when its functions were transferred to Department of the Environment and, later, the Property Services Agency formed in 1972. MOD has suggested that the Appellant’s late father’s records may have been absorbed into the records of the successor bodies to the Ministry of Public Building and Works. It has provided him with the contact details of The National Archives, the Foreign Office and Passport Office.

18. I have considered all the evidence very carefully but, applying the standard of the balance of probabilities, I am not persuaded that MOD holds the information requested by the Appellant. It is clear that the Appellant’s late father worked at the naval base, but it seems unlikely that he was employed directly by the Navy, especially in view of the 1968 termination certificate headed “Ministry of Public Building and Works”. It seems unlikely that if he had been employed by the Ministry of Public Building and Works, the MOD would hold his personnel records.

19. I am not persuaded that the Information Commissioner erred in accepting the MOD’s case that the information was not held. It was reasonable in all the circumstances for her to accept that MOD had carried out extensive searches for the requested information, as described in the Decision Notice, and that no records were found. The Appellant has not persuaded me otherwise.

20. Accordingly, I must dismiss the appeal. The MOD’s suggestions of where the records might be found seem sensible and I wish the Appellant luck in finding the information he seeks elsewhere.

ALISON MCKENNA

DATE: 5 December 2017

PRINCIPAL JUDGE

DATE PROMULGATED: 6 December 2017