



Neutral Citation Number: [2023] UKFTT 831 (GRC)

First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2022/0368

Decided without a hearing on 23 August 2023

Decision Given on: 12 October 2023

Before

JUDGE ANTHONY SNELSON
TRIBUNAL MEMBER ANNE CHAFER
TRIBUNAL MEMBER EMMA YATES

Between

MR GEORGE MALLEY

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

THE ACCOUNTANT GENERAL OF THE SENIOR COURTS

Second Respondent

DECISION

On reading the written representations on behalf of the parties, the Tribunal unanimously determines that the appeal is dismissed.

REASONS

Introduction and procedural history

1. This appeal arises out of a request by the Appellant (to whom we will refer by name) for information concerning certain cases listed in the Court Funds Office ('CFO') Unclaimed Balances Index.
2. The CFO, a business unit of the Ministry of Justice, is the accounting office of the Second Respondent ('the Accountant General'). It manages, among other things, the system through which payments into court are made.
3. Sums to be paid into court are transferred to, and held by, the CFO (Court Funds Rules 2011 ('CFR'), r7(1)). Payments in are generally made pursuant to sealed court orders or authorities directing deposit (CFR, r6(1)). If a payment is made in any of the rare circumstances covered by CFR, r6(2)-(11), separate stipulations apply.
4. The claim or case number is assigned to a claim by the court when it is sealed and issued for service. It is used in all court dealings and correspondence thereafter as the principal means of identifying the particular piece of litigation to which it is attached. For this reason, the paperwork generated in any and every case, including any documentation relating to a payment into court, will bear the claim or case number.
5. On receiving a relevant sealed order or authority, the CFO generates a CFO account number in respect of the deposited funds. This is different from the claim/case number.
6. The CFO maintains on its website a register of unclaimed deposits, known as the Unclaimed Balances Index ('the Index'). It is intended to serve as a means of enabling entitled parties to recover what is owing to them. The Index shows the name of the case and the CFO account number but not (at least in most cases) the claim/case number.
7. On 17 September 2021 Mr Malley, wrote to the CFO giving the names of 20 cases listed on the Index and requesting in respect of each, pursuant to the Freedom of Information Act 2000 ('FOIA')¹, details of (a) the relevant court and (b) the claim/case number.
8. The CFO responded on 14 October 2021, agreeing to comply with part (a) of the request but refusing to supply the information sought by part (b), citing FOIA, s32(1)(c) (court records etc) and s40 (personal information). The part (a) information was duly delivered about a week later.
9. Mr Malley took issue with the response to part (b) but on 22 November 2022, following an internal review, the CFO reaffirmed its stance.

¹ To which all references to section numbers below refer

10. On 11 March 2022, Mr Malley complained to the First Respondent ('the Commissioner') about the way in which his request for information had been handled. On 25 April 2022, following a preliminary investigation, the Commissioner wrote to Mr Malley explaining his provisional view that the information sought was exempt under s32(1)(c). Mr Malley was unmoved, and a fuller investigation was then conducted, in the course of which the CFO relied for the first time on a third exemption, under s31(1)(c) (law enforcement - administration of justice).
11. By a decision notice dated 17 October 2022 the Commissioner determined that the exemption relied under s32(1)(c) was engaged. In those circumstances, he did not judge it necessary to deal with the ss40 and 31(1)(c) arguments.
12. By a notice of appeal dated 18 November 2022, Mr Malley challenged the Commissioner's adjudication.
13. Pursuant to a direction given on 16 December 2022, the CFO was joined as Second Respondent.
14. The Commissioner and the CFO resisted the appeal in their responses dated 27 January and 3 February 2023 respectively, both drafted by specialist counsel.
15. To those Mr Malley served replies dated 13 and 17 February 2023 respectively.
16. The dispute came before us for consideration on the papers, all parties having consented to it being resolved without an oral hearing. We were satisfied that it was just and in keeping with the overriding objective to adopt this procedure.

The Law

17. FOIA, s1 includes:
 - (1) 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.
18. The s1 right is qualified by a number of exemptions. FOIA, s32 includes:
 - (1) Information held by a public authority is exempt information if it is held only by virtue of being contained in -
 - ...
 - (c) any document created by -
 - (i) a court, or
 - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

19. If engaged, the exemptions under s32 are absolute (s3(2)(c)). There is no public interest balance to be weighed.
20. In *Peninsula Business Services v ICO and SOS for Justice and Lord Chancellor* [2014] UKUT 284 (AAC) the Upper Tribunal held that the exemption under s32 applies to the information contained in the relevant document and not to the document itself (see especially paras 45-48). In keeping with this, the Commissioner's Guidance on s32, with which we agree, notes (para 47):

Information that has been extracted from a relevant document will also be covered by the exemption even if it is later transferred to other documents or held or used in other ways.

21. The appeal is brought pursuant to the FOIA, s57. The Tribunal's powers in determining the appeal are delineated in s58 as follows:

(1) If on an appeal under section 57 the Tribunal consider -

- (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.

The appeal

22. Mr Malley advanced three main points in support of his appeal. First, s32(1)(c) does not apply as the requested information is not contained in documents created by courts, or the courts' administrative staff, for the purpose of proceedings in a particular cause or matter. Second, s32(1)(c) does not apply because, at the time of the request, the relevant courts no longer held the documents containing the information requested. Third, the public authority failed to exercise its discretion in considering his case.
23. In their comprehensive submissions counsel for both Respondents argued that all grounds were unsustainable and the case fell full square within the exemption under s32(1)(c). In the alternative, they further contended that the request was defeated by the other exemptions cited. In addition, Mr Mills, on behalf of the Commissioner, brought s32(1)(a) into play, should it be needed.

Conclusions

24. In our view, this is as plain a case as one could imagine, and we regret that Mr Malley did not reconsider his position in light of the Commissioner's attempt to moot an early resolution of the appeal.
25. We agree with counsel that the two main arguments of Mr Malley miss the point.² Self-evidently, the information in issue (the case number) was 'held' by the CFO 'by virtue of being contained in' a 'document created by a court or a member of the administrative staff of a court'. The 'document' in each case was the court-generated paperwork (almost certainly a court order or authority) submitted with the deposited funds. That paperwork, which inevitably carried the case number upon it, was 'created for the purposes of proceedings in a particular cause or matter': it was generated in order to give administrative effect to a payment into court in a pending action in due compliance with CFR. And, equally self-evidently, the information (the case number) was held by the CFO 'only' because it was contained in the relevant document(s): the CFO became privy to the case number only because of the payment into court and the consequential generation of the associated paperwork bearing upon it the relevant case number. The CFO would otherwise have had no cause to come into possession of the case number. And the question whether, at the time of the request, the paperwork generated by the payment in was still held by the CFO, is quite irrelevant. As the *Peninsula Business Services* case (cited above) makes clear, the legislation is concerned with how the information (the case number) came into the public authority's possession, not with what happened thereafter to the paperwork by which it had initially been conveyed.
26. For these reasons we are quite satisfied that the Commissioner was right to decide that s32(1)(c) was engaged.
27. Turning to the third ground of appeal, we agree with Mr Mills that discretion does not come into the matter. The CFO rightly cited s32(1)(c). The complaint that it should have exercised some sort of discretion to do something different is untenable and in any event outside our jurisdiction. Of course, we do have jurisdiction to revisit a discretionary decision of the *Commissioner* in an appropriate case, but this is not one such. The Commissioner was faced with the straightforward task of determining whether, on a proper application of the legislation to uncontroversial facts, an exemption was, or was not, engaged.

Disposal

28. For the reasons stated, we conclude that the appeal has no merit and must be dismissed.

² The first is also simply wrong as a matter of fact. Case numbers *are* created by the court. But developing this would serve no useful purpose since, as we will very shortly explain, the 'document' with which s32(2)(c) is concerned is not (as Mr Malley appears to believe) the originating process but the paperwork generated for the purposes of effecting the payment into court.

Anthony Snelson

Judge of the First-tier Tribunal

Date: 6 October 2023