



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2007/0041
Information Commissioners Ref: FS50079972

Freedom of Information Act 2000 (FOIA)

Heard at Procession House, London
on 15th. November, 2007

Decision Promulgated
3rd December 2007

BEFORE

INFORMATION TRIBUNAL CHAIRMAN

DAVID FARRER Q.C.

and

LAY MEMBERS

ROGER CREEDON AND GARETH JONES

Between

REGINALD CHARLES HARGRAVE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

THE NATIONAL ARCHIVES

First Additional Party

and

THE COMMISSIONER OF POLICE OF THE METROPOLIS

Second Additional Party

Representation:

The Appellant in person:

For the Respondent: Jane Oldham

For the Second Additional Party: Andrew Waters.

The First Additional Party was not represented.

Decision

The Tribunal dismisses the appeal and upholds the Decision Notice.

Reasons for Decision

The request for information

All references to sections of a statute are to the provisions of the Freedom of Information Act, 2000, unless otherwise indicated.

- 1 By a communication dated 9th. February, 2005, which followed correspondence predating the coming into force of section 1, the Appellant formally requested from the First Additional Party ("TNA") information in the form of a file of documents relating to the investigation by the Second Additional Party and his predecessors ("TMP") of the murder in September, 1954 of Jean Mary Townsend.

- 2 That Request was refused by e mail dated 17th February, 2005 invoking the exemptions contained in sections 31, 40 and 41. That refusal did not comply with the requirements of section 17(3). Nothing hinges on that breach, however, since as the Respondent (“the”IC”) found in his Decision Notice, it was made good in the notice of review by TNA dated 9th. June, 2005,
- 3 The file had been referred to TNA by TMP many years before and TMP reviewed the public interest for the purposes of that review.
- 4 The Appellant complained to the IC against the refusal by letter dated 13th. June, 2005. He indicated that he had been in correspondence with TMP since 1996 and that his sole aim was to do justice to the murdered woman and her family. In due course he submitted a “Statement of Case”, setting out the results of his inquiries and providing a substantial body of letters and other material relating to them.
- 5 In his Decision Notice, dated 3rd. April, 2007, the IC upheld the refusal by TNA, concluding that section 31 was engaged and that the public interest favoured the continued withholding of the file from public inspection. Consequently, he did not consider arguments directed to the application of sections 40 and 41. Nor have we. In the light of our decision as to the effect of section 31 on the facts before us, it is unnecessary to do so, though we should have had jurisdiction, in our judgment, had the need arisen.
- 6 The Appellant served Notice of Appeal on 23rd. April, 2007, annexing to it a substantial number of documents, including copies of correspondence with the relevant authorities since 1996, an application for extended closure of the file, dating from 1983, the transcript of an interview on the Radio 4 “Home Truths” programme in January, 2002, the autopsy report and a transcript of the inquest of 19th. October, 1954. Further material followed.
- 7 TNA was joined as an additional party on 25th. June, 2007 and TMP, as the public authority which referred the information to TNA, on 23rd. July, 2007.
- 8 The arguments advanced in support of the refusal and the Decision Notice were substantially repeated in the I.C. `s Reply to the Notice of Appeal and his and TMP `s written submissions to the Tribunal, to which we refer below.

The Facts

- 9 Jean Townsend, who was twenty – one years old, was found dead on waste ground on 15th. September, 1954, near the home in Ruislip, Middlesex, where she lived with her parents. She had been strangled with her own scarf. Her underwear, stockings and suspender belt lay near her feet. According to the autopsy report, apart from the removal of her underwear, there was no obvious sign of sexual interference. There were no signs of violence, save those resulting from the asphyxiation ; her clothing was undamaged.
- 10 She had been seen leaving South Ruislip underground station and walking alone along the road where the waste ground was situated shortly before midnight, apparently following a visit to a West End nightclub. That she died at or about midnight was consistent with the observations of the Home Office Pathologist, Professor Teare.
- 11 Extensive inquiries followed. Detective Superintendent Richardson, who led the inquiry, deposed at the Inquest that no suspect had been identified but that his investigation continued. Whilst a considerable body of evidence and information was assembled, the murder remained unsolved.
- 12 Mr. Hargrave, though now living in Gloucestershire, had then been resident in the Ruislip area and had, he told us, attended the same school as Miss Townsend, a year junior to her, and knew her parents. This was a significant factor, as we fully accept, in his concern for the solving of this murder.
- 13 In October, 1982, a telephone call or calls relating to the murder were made to the local police by a caller who withheld his or her name. The case papers were reviewed but evidently the police took the matter no further.
- 14 In 1983, TMP applied successfully to the Lord Chancellor for a 75 year extension to the period of closure of the investigation file, which therefore remained closed until 2058. It was by then held by TNA, then and until recently known as the Public Records Office, as is normal with files of such relative antiquity. That period was reduced on later review, so that the file would be opened in 2031.

- 15 As already noted, the Appellant`s inquiries began around 1996. He made a series of requests and approaches to TMP and other authorities in the years before FOIA came into force and corresponded with police officers who handled the investigation many years after the murder. He appealed to The Lord Chancellor`s Advisory Council on National Records and Archives. He did not obtain access to the file nor any material beyond those documents that he presented to the I.C. and, in due course, to this Tribunal. The reasons given for the continued refusals corresponded broadly to those relevant to the exemptions under sections 31 and 41.
- 16 In January, 2002, in the course of an edition of "Home Truths" on Radio 4, John Peel interviewed a woman named Mollie Thurston, living in Scotland about her brief friendship in the 1950s with a man, half Italian, named Frank, who was a - chemist and who spoke of his readiness to pay a very large sum to a man who would kill a woman. A friend had warned her about Frank, who rented a room from her, telling her that he had been interviewed several times by the police at Paddington Green and habitually travelled up and down the Central Line at night, looking at the passengers. Mollie, so she said, had subsequently driven Frank to Dover, en route to Italy. He had telephoned her thereafter but never returned to the United Kingdom. Later, the same friend had broken open a locked wardrobe in the room that Frank had occupied and found inside a jacket from a U.S. airman`s uniform with a button missing. Mollie told John Peel that such a button had been found either in the hand of the murdered girl or close to her body.
- 17 According to his "Statement of Case", which we readily treat as his witness statement, the Appellant subsequently interviewed Mollie Thurston and obtained further information as to "Frank", whose full name was Count Francesco Carlodalatri, born of an Italian father, a member of the Italian nobility, and an English mother of similar rank. Her sister was supposedly titled and was married to a member of the cabinet of the day.. The Appellant subsequently confirmed that the Count had died in Italy in 1987, having obtained a copy of his death certificate.
- 18 The possible relevance of these relationships, if correctly identified, was said to be that they might explain the apparent failure to charge Frank with the murder

and the decision in 1983 to extend the closure of the file. The Appellant made clear in the Statement his suspicion that the murderer may have been protected by those in authority and that the file may disclose material supporting this conjecture.

The relevant law

19 Section 31, so far as material, reads :

“ (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,

(c) the administration of justice, ”

20 This information is not exempt by virtue of section 30 (which relates to cases where information is held with a view to charging a suspect or proving his guilt). The exemption is qualified, by virtue of section 2(2)(b).

21 The issues for the Tribunal are therefore :

(i) Would disclosure of this file prejudice or be likely to prejudice any or all of the interests identified in s 31(1) (a), (b) or (c) ?

(ii) If it would, does the public interest in maintaining the closure of this file outweigh the interest in disclosure ?

22 As to (i), the case for the I.C. and TMP rests on the likelihood, not the certainty of prejudice. We were reminded of the analysis of the “prejudice” test set out at paragraphs 27 to 36 of the judgment of this Tribunal in *Hogan and Oxford City Council v The Information Commissioner EA/2005/0026 and 0030*. Of particular relevance here, the risk of prejudice must be real and significant, though it may fall short of being more probable than not.

23 We accept that the nature of a murder investigation is not such that the file can be redacted or partially disclosed. In this case it is all or nothing.

- 24 As observed in *Hogan*, if section 31(1) is engaged, there is a substantial overlap with considerations of the public interest.

The submissions

- 25 On the question of prejudice, the Appellant occupied a rather difficult position because the main thrust of his complaint as to TMP is that it has failed properly to follow lines of inquiry of the kind identified in paragraphs 16 – 18 above. Whether, if true, this was because it was protecting the likely murderer for political reasons or through simple incompetence, such a claim suggests that further investigation can and should be undertaken. If that is so, the risk of prejudice to the interests protected by s. 31, if the file is now disclosed, not just to the Appellant but to the world at large, seems to be greater than might otherwise be the case.
- 26 If section 31 is engaged, he argues that the public interest favours disclosure because of the indications of wrongdoing or, at least incompetence, in the conduct of these inquiries by the police. He contends that disclosure is essential, if justice is to be done to the dead woman and her family, however belatedly, and contends that the truth as to the identity of the killer is more likely to emerge if the details of the investigation are made public
- 27 The written submissions of the I.C. and T.M.P. are closely reflected in the written statement of Detective Superintendent David Miveld, representing the Commissioner, who also gave oral evidence. At the time of making his statement, he had not studied the particular file and his evidence, like the written submissions of the parties resisting disclosure were very general in nature.
- 28 They referred to the gravity of the offence and the possibility that scientific progress, such as the increasing refinement and effectiveness of DNA profiling might make available evidence, which is not currently available. (A letter from

the Forensic Science Service to the Appellant, dated October, 2000, indicated that DNA analysis of whatever material survived had produced nothing of value). They further cited examples of cases in which witnesses who had originally said nothing for whatever reason, disclosed vital evidence, sometimes many years later, because of changes in their attitude or circumstances. The publication of the file, even now, could therefore prejudice a future trial, we were told.

The evidence

- 29 Giving oral evidence, Mr. Miveld said that he had now read the case papers and indicated that the surviving file contained about 250 statements, including, he believed, those taken shortly after the murder and therefore those most likely to be significant. A significant number were missing but he did not think that their loss seriously weakened the value of the surviving material. The investigating officer's report survived and was very full. In response to questions from Mr Hargrave, Mr Miveld said that all lines of enquiry had been followed and that an exhibit still existed. He reiterated the points made in his written statement and related them to the public interest test also.
- 30 It became clear to the Tribunal that we ought to hear further evidence as to the contents of the file in the absence of the Appellant and the public, in accordance with Rule 22 of the Information Tribunal (Enforcement Appeals) Rules, 2005. We thought it possible - and counsel for TMP confirmed - that the file contained material specific to this case which might be relevant on both the issues which we might be required to determine and that discussion of it in public would effectively amount to pre - emptying the determination of this appeal. We therefore did so, having explained our reasons to the Appellant.
- 31 Accordingly, we have appended to this ruling a closed annex, setting out certain features of the evidence that we heard in private session and our conclusions as to its relevance to the issues raised by this appeal. That annex will be published only to the Respondent and the Additional Parties, subject to

any later contrary ruling by this Tribunal or a Judge or Judges of the High Court of Justice.

The Tribunal`s findings

32 Prejudice to the interests identified in s.31(1)(a)(b) and (c)

In the context of this appeal we regard the three interests as indistinguishable, save in so far as (a) (“the detection of crime”) may continue even where (b) and (c) can no longer be prejudiced because there is no possibility of any future judicial proceedings. That said, the considerable passage of time has not destroyed any possibility of prosecuting a suspected offender. If the evidence became available, it may well be that the murderer is still alive, though probably at least seventy years old.

33 We think it very likely that disclosure of this information would prejudice the investigation of the murder and the fair trial of an accused, if such a trial were due to take place now or in the reasonably near future. We have not seen the file but have been given a general account of it by Mr. Miveld.. We do not doubt that it contains a wealth of information and conjecture which would not amount to admissible evidence, whether for prosecution or defence and might not even be liable to disclosure to the accused in accordance with the requirements of section 3 (as amended) of the Criminal Procedure and Investigations Act, 1996. If that is so, there would plainly be irreparable prejudice to interests (b) and (c), if a trial was pending or in prospect.

34 The critical issue, however, is whether there is indeed any substantial likelihood of the murderer being detected and/or a prosecution being undertaken.

35 Whilst we have regard to the general considerations set out in the I.C.`s and TMP`s submissions and in Mr. Miveld`s statement, we are not impressed by

some of them, given the age of this case. There is no reason, of which we are aware, why any witness should now have a critical change of heart or crisis of conscience. Forensic science may advance in unforeseen ways and a detective might spot a connection which eluded his or her predecessors .fifty years ago. Such possibilities of progress cannot be excluded but they hardly amount to substantial reasons for thinking that there will ever be a future investigation which might be prejudiced.

- 36 If the evidence had remained as advanced in the written submissions, it is quite likely that we should have concluded that section 31(1) was not engaged because the likelihood of prejudice could not be demonstrated. Where information is requested as to a long – dormant investigation, it may well be that a simple recitation of standard policy arguments will not suffice to overcome the first hurdle standing in the way of this exemption.
- 37 However, we heard further evidence in the private session which clearly altered our view on this issue because it was specific to this case. It did not indicate that a future identification and prosecution of the killer was more likely than not. It did persuade us that there was a significant possibility of such a development, such as to satisfy the test imposed by section 31(1), as explained in *Hogan*.

The balance of the public interests

- 38 The principal interest in disclosure of this information is the need to ensure public accountability for various aspects of the conduct of significant police investigations, even in the distant past. That is acknowledged by both parties opposing this appeal.
- 39 Whilst the public has a legitimate interest in charting the use by the police of developing tools of detection and in reviewing the efficient use of resources, a far stronger interest in such accountability would exist, if there were reason to suspect that this investigation had been hindered or corrupted by any wrongful

attempt to protect a suspect or, worse still, facilitate his escape from this country, hence from justice.

- 40 Whilst we respect the sincerity of the Appellant`s concerns in this regard, we find no sensible basis whatever for suspicion of such misconduct.
- 41 The supposed connection of “Frank” or “Francesco” with this murder is speculative in the extreme. We do not intend to review in detail the information supplied by the Appellant. It may be observed, however, that no button of any kind was reported as found at the scene. “Mollie`s” account seems to be based in large measure on what she says she was told by her friend. She contradicts herself as to whether “Frank” was interviewed about the murder or some other topic, assuming he was interviewed at all. Her account seems to have developed, if one compares what she told John Peel with her story to the Appellant. The assertion that “Frank`s” links to the English nobility were clearly established is a gross exaggeration. The suggestion that he may have been thereby connected to a member of the Churchill cabinet is pure speculation.
- 42 Whether provision of this information would, in any real sense, do justice to the murdered woman and her parents (both now dead) is unclear. Indeed, without any intended disrespect to the Appellant, we are far from sure that we know what such a concept means in this context, other than where disclosure reveals or leads to the truth. It follows from our finding on the issue of prejudice that it might, in our opinion, have exactly the opposite effect.
- 43 We do not consider, therefore, that there is any substantial public interest in the disclosure of this information.
- 44 On the other side, we have already said that the general factors recited in written submissions on the prejudice issue did not strongly impress us in this case. Given the overlap between the two issues for determination, it follows inevitably that they do not amount to significant arguments against disclosure,

.in the balancing of public interests on this appeal. Had the evidence stopped there, we might have been faced with a fine balance between insubstantial interests on both sides.

45 It did not, however. The matters revealed in the private hearing tilt the balance decisively in favour of the continued closure of this file, hence the refusal of this request.

46 We understand that the I.C. had access to the file but not to the further information which we received in the private hearing. It may be, therefore, that our assessment of the strength of the case against disclosure set out in the Decision Notice and the written submissions differs from his. Be that as it may, on all the evidence before us we have come firmly to the same conclusion. We therefore confirm that his Decision was in accordance with law and dismiss this appeal.

47 This ruling does not require further action from any party.

David Farrer

Deputy Chairman

Date 19th. November, 2007

