



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2014/0131

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50523494
Dated: 28 April 2014

Appellant: Pru Elliott

Respondent: Information Commissioner

Second Respondent: The Animal Health and Veterinary Laboratories Agency

Date of paper hearing: 19 January - adjourned to 21 April 2015

Before
Melanie Carter
(Judge)

and

David Wilkinson
Henry Fitzhugh

Date of Decision: 11 May 2015

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal decided to dismiss the appeal.

REASONS FOR DECISION

Introduction

1. This appeal arises from a letter of request for disclosure by Ms Pru Elliott of Compassion in World Farming (“the Appellant”) to the Animal Health and Veterinary Laboratories Agency (“AVHLA”). The letter of request was dated 4 September 2013 and was for the following information:

“What was the origin (specific postal town or county within the UK) of the sheep that were loaded onto the truck 01 MH 15048 (IRL) and taken from the UK to Germany?”
2. The AVHLA responded to the request on 9 October 2013 refusing to disclose on the basis, further to section 38(1) of the Freedom of Information Act 2000 (“FOIA”), that disclosure would be likely to endanger the health and safety of staff involved in the transportation of live animals. The rationale set out in the internal review was that the name and address of Assembly Centres are published online and that disclosure of the town or county of origin of the particular consignment of sheep, given how few Assembly Centres there are, would lead to identification of the exact location. The view put forward was that this would give rise to a risk of animal rights activism and thereby to a risk to health and safety of individuals working at the particular Assembly Centre. Thus, the exemption at section 38 FOIA was engaged. AVHLA was of the further view that the public interest in maintaining the exemption outweighed the public interest in disclosure.
3. The Appellant complained to the Information Commission (“the Commissioner”) who investigated and decided to uphold the public authority’s decision. This appeal is as to the Decision Notice dated 28 April 2014 issued by the Commissioner. This concluded that the exemption at section 38(1)(b) (as opposed to (a)) applied such that AVHLA had been entitled not to disclose the requested information. In particular, the Commissioner took into account a previous Decision Notice in which he recognised a threat of animals rights activism to the animal transport chain (see Decision Notice FS50465448 – (“the previous Decision Notice”). The Commissioner concluded that there was no indication that the risk had diminished since the date of the previous Decision Notice and moreover the AVHLA had identified some recent actions of campaigners that it considered set a worrying trend in respect of the safety of individuals involved in the transportation trade. The Commissioner applied a test that in his view, section

38(1)(b) would be engaged where the risk of endangering the safety of any individual was substantially more than remote.

4. Our task is to assess whether the Decision Notice is in accordance with law.

Grounds of appeal

5. The grounds of appeal are that:

a. Section 38(1)(b) is not engaged i.e.: there is no case to show that disclosure of the requested information would be likely to result in endangerment given:

- (i) There had never been an incident at a port-side protest which has caused harm to any individual involved in the export trade;
- (ii) Despite many campaigners knowing the name and address of the three main individuals involved in the export trade no harm has come to any of these individuals.

b. That the public interest test has been incorrectly applied. This is because, in brief, the requested information would enable campaigners to make accurate reports to AHVLA in relation to whether there had been any breaches of the relevant legislative requirements thereby highlighting poor practice and assisting in the improvement of procedures. The Appellant asserts that there is considerable general public interest in the issue of the live export of animals as well as the strong particular interest of those campaigning against the trade. It is argued that as there is no evidence of any particular risk of harm and that accordingly the public interest is in favour of disclosure.

6. The evidence before the Tribunal included a witness statement from Catherine McHugh, the Head of Information and Data Management at AHVLA. Her evidence was to the following effect:

a. AHVLA's role is to safeguard animal health and welfare as well as public health, protect the economy and enhance food security through research, surveillance and inspection. It is further responsible for the operational delivery of live exports, including monitoring compliance with the law, and the taking of regulatory enforcement action. Relevant to the underlying facts of the requested information is that AHVLA monitors compliance with

the regulations regarding animal transportation throughout the animals' journey. This includes prior and post journey approval of journey logs and port side inspection of animals.

- b. The Appellant is a member of Compassion in World Farming. As FOIA is applicant neutral (i.e.: it is not relevant who the requester is), AVHLA considered the request in the context of all animal rights campaigning, not just that carried out by Compassion in World Farming. Its approach was not 'tarring [Compassion in World Farming] with the same brush' as other campaigning entities but rather taking the appropriate wider view of whatever risks might arise and from whatever quarter, from the disclosure of the requested information. Thus, a different organisation active in the Kent area, which includes the Ramsgate Port at which the relevant shipment of sheep was embarked/disembarked, is the Kent Action Against Live Exports (KAALE).
- c. KAALE carried out detailed observations of journeys of livestock including a detailed report of the journey of the vehicle which is the subject of the request in this appeal. The Tribunal was shown this report documenting the lorry being followed, the driver being approached and, whilst there was no evidence of any intimidation in the words used, the driver did request extra security at his destination.
- d. Extensive references were made by Ms McHugh to social media used by those opposed to live animal exports, specific to the Port of Ramsgate; for example, Facebook pages for "Stop Live Exports From The Port of Ramsgate". These included photos of vehicles, drivers/personnel involved in transporting live animals and alongside these or in response, threatening comments. By way of example, the following were posted: on 29 August 2014 "Piece of filth I hope he is in a fatal crash when his lorry is empty. He has no right to life"; on 5 September 2014 "On the road I feel like shooting the bastard driver!!!"; on 20 July 2014 "I would like to punch his ugly fat face". The Tribunal was told that KAALE's website enabled the identification of the companies involved and provided their contact details. In addition, the Facebook pages exhibited showed the identification and contact details for AHVLA offices.

- e. The witness statement directed the Tribunal to photographs and video footage on Facebook and KAALE's website, a number of which were also on YouTube, showing protestor activity at the Port of Ramsgate. This showed verbal abuse and a crowd of people shouting and pushing towards the lorries.
 - f. A number of protests were detailed including events in 2014 in which protestors again shouted abuse and ran at lorries etc. and one incident in which a Port official was pushed. Ms McHugh detailed events pre-dating November 2013 (the date of internal review) including a protestor on a dual carriageway running at a lorry, the throwing of an umbrella at a lorry windscreen causing it to crack, a protest at AVHLA offices, front and back including the placing of a banner on the AVHLA stairs to their offices and the shouting of abuse at staff.
7. The Tribunal called for the evidence in relation to the previous Decision Notice, upon which the Commissioner relied. This evidenced a protest in 2012 at Dover targeting AVHLA offices, the hanging of banners, a group entering the office building and the police being involved to secure their removal. This evidence also included details of further protests at the Port of Ramsgate in late 2012.
8. One issue in relation to the above evidence raised by the Tribunal was that much of the social media evidence and some of the protest incidents put forward by AVHLA post-dated the refusal of the request (taken as the internal review decision – November 2013). AVHLA submitted that this was relevant in testing the reliability of any conclusion that at the relevant date, there existed a likelihood of endangerment to health and safety of any individuals. The Tribunal, whilst not placing direct reliance upon this information, given its scale and nature was of the view that this did indicate a continued pattern of abuse and threats arising from the live exports of animals at the Kent ports. As such, it was of relevance in supporting the Tribunal's view that the public authority had, before that, come to a reasonable view on this in November 2013.

Is section 38(1)(b) engaged?

9. The Tribunal did accept, having reviewed the evidence and on a closed basis (ie: not shared with the Appellant) the material which is the subject matter of the request, that there was a significant likelihood of the particular Assembly Centre being identified by an interested member of the public, were disclosure to be made.

10. The Tribunal was concerned to ensure that merely because there had been a previous Commissioner decision relating to animal rights activism and indeed, the wider public view of such, that there should not be an automatic assumption that any FOIA request in this broad area should be refused. Indeed, this was one of the reasons the Tribunal had called for the evidence underpinning the previous Decision Notice. It was extremely important that legitimate campaigning not be inhibited by way of lack of access to FOIA information, on account of any preconceived ideas as to the nature of that campaigning. Thus, the Tribunal spent a considerable amount of time evaluating the evidence before it and its implications for any risks to the health and safety of individuals.

11. The Appellant relied upon there being no evidence of any actual physical attacks or harm to any individual working in the animal export trade or at AVHLA. AVHLA's submissions were to the effect that there is no requirement of proof of actual harm to anyone, the relevant test under section 38(1)(b) being that there is a risk of endangerment to health and safety. The Tribunal accepted AVHLA's submission in this regard as being a correct interpretation of the law. It noted however that there had been two incidents involving physical aspects (viz the throwing of an object at a windscreen and a Port officer being pushed). It was however, the general climate in which the protests were taking place and the surrounding circumstances, which in its view, substantiated the engagement of the exemption.

12. Thus, the nature and degree of the protests entailed significant numbers of protesters milling around and running alongside lorries. The attendant verbal abuse both at the protests and in particular on social media (which included physical threats), taken together, made it realistic, in the Tribunal's view, to

reach the conclusion that there was a likelihood of endangerment to security. The incident involving the tailing of the lorry, taken in this context would, reasonably in the Tribunal's view, have given rise to a high level of anxiety in the lorry driver and a reasonable fear for his security. The Tribunal was of the view that the risk of endangerment or prejudice to the safety of any individuals that this gave rise to was material, or put differently and in terms of the test applied by the Commissioner, was substantially more than remote.

13. The absence of any clear, direct evidence of physical harm had to be interpreted alongside the substantial evidence of the abusive and aggressively personal nature of the protests directed against those involved in the export of live animals. In light of the nature of the protests, the Tribunal was of the view that there is a real risk of such protests putting individuals' safety in danger.
14. In these circumstances, the Tribunal took the view that AVHLA and the Commissioner in turn had been correct in concluding that section 38(1)(b) was engaged.

Was the public interest balancing test correctly applied?

15. The Tribunal noted the public interests in disclosure put forward by the Appellant at paragraph 5 above. It accepted that disclosure would assist those interested in the welfare of animals being exported from the UK in rendering exporters liable to enforcement action in particular cases and rendering AVHLA more accountable in its operations. The information sought would provide a more complete picture in relation to the movement of transported animals and the calculation of the travel time, thereby indicating whether regulations had been breached. Underlying these were important public interests.
16. However, whilst acknowledging these points, the Tribunal was of the view that, provided AVHLA was carrying out its functions properly, there was limited public interest in this role being effectively supported by direct action taken by interested members of the public. The Tribunal had not been privy to evidence to show that AVHLA was failing in its duties. The proper way for regulatory

breaches to be investigated and identified was via the proper authorities rather than incidents being investigated and enforcement of the regulations policed by committed members of the interested public.

17. The countervailing public interest in maintaining the exemption, as put forward by AVHLA and the Commissioner, was that there was a compelling public interest in protecting the safety of those individuals working at sites connected with transportation of animals. The Tribunal was of the view that significant weight should be placed on protecting individuals' security. It was only where, indeed, there was a compelling reason to support disclosure, that the requested information should be disclosed. The Tribunal took into account, in balancing the public interest, that the exportation of animals remains legal and that those working in this area were entitled to be free from intimidation or threats of harassment. Given the other mechanisms for bringing those transgressing the law to account, there was insignificant justification to warrant disclosure. The public interests in favour of maintaining the exemption outweighed those in favour of disclosure.

Conclusion

18. In light of the reasons set out, the Tribunal was of the view that the appeal should be dismissed.

19. Our decision is unanimous.

Signed

Judge Melanie Carter

Date: 11 May 2015