



Neutral citation number: [2024] UKFTT 315 (GRC)

Case Reference: EA/2023/0385

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard on: 1 March 2024 Via CVP
Decision given on: 18 April 2024**

Before

**TRIBUNAL JUDGE WILSON
TRIBUNAL MEMBER MURPHY
TRIBUNAL MEMBER PEPPERELL**

Between

TREVOR LEE OAKLEY

Appellant

and

INFORMATION COMMISSIONER

Respondent

Decision: The appeal is **Dismissed**

REASONS

Mode of hearing

1. The proceedings were held by video (CVP). The Appellant was in attendance and represented himself. The Respondent did not attend and was not represented. The Respondent had confirmed in advance that he was content for the appeal to be determined in his absence on the basis of the Respondent's written submissions and the papers before the Tribunal. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

Background to Appeal

2. This appeal is against a decision of the Information Commissioner (the "Commissioner") dated 31 August 2023 Ref. IC-234047-T7R5 (the "Decision Notice"). The appeal relates to the application

of the Freedom of Information Act 2000 (“FOIA”). It concerns a request for “data” under FOIA as detailed below.

3. On 5 March 2023 the Appellant wrote to the Department for Work and Pensions (DWP) and made the following request (the Request):

“The DWP operates Jobcentres in the UK staffed by G4S staff. There are occasions in which staff employed at the DWP engage in criminal misconduct such as assault, misconduct in public office, and other offences.

If a visitor to the Jobcentre films DWP staff and/or G4S for the purpose of evidential collection, what is DWP policy to apply force to the person collecting evidence, possibly for the Home Office, CPS, or for a private prosecution? Aside from the use of force, what other action could be taken under DWP policies to prevent evidence from being collected.

If the person is prevented from collecting evidence by the use of force and/or other preventive action by G4S and/or DWP staff, what is the DWP policy related to perversion of the course of justice, witness harassment, and other offences related to the flow of justice in England and Wales?

The law does not distinguish between actually using force, and attempting to use force. The law also makes it an offence to assist in an offence such as perverting the course of justice, including preparatory action. You should include in your answer policies therefore related to attempting to use force, preparing to use force; and assisting in these actions.”

4. The DWP responded on 3 April 2023. The DWP stated that it held some of the requested information but it did not provide the information.
5. Following an internal review, the DWP wrote to the Appellant on 28 April 2023. The DWP advised that it was upholding its original response and provided the information within the scope of the request.
6. On 21 May 2023 the Appellant made a complaint to the Respondent in relation to the Request.
7. In the Decision Notice the Respondent concluded that the DWP did not hold any additional information within the scope of the Request because:
 - a. The Respondent accepted that the DWP had conducted electronic searches in all relevant areas of the business, these areas included People & Capability (HR), Security & Data Protection and Estates (who manage the sites/security contractors). The search terms used

- included “filming in job centres/DWP premises, unauthorised filming, unacceptable customer behaviour”.
- b. The Respondent accepted that the DWP also consulted colleagues within the relevant subject areas who confirmed that no further information was located.
 - c. The Respondent accepted the DWP’s position that there was a business requirement for it to hold information relating to the request, as it would advise staff what they should do in the event that unauthorised filming takes place.

Appellant’s Position

8. The Appellant’s position as set out within his written submissions (to include his complaint, grounds of appeal, reply, new evidence document and final submissions) and oral submissions can be summarised as follows:
- a. The Appellant’s primary submission is that the word searches of the DWP’s database were inappropriate as they focused on filming only and not evidence collection. In support the Appellant relies upon an extract from a legal text titled “Welfare, Damien Cornerstone on Information Law. Bloomsbury Publishing 2019” together with ChatGPT evidence.
 - b. The Appellant relies upon an annual report which details the DWP’s enforcement role and enforcement budget of £900 million. The Appellant asserts that given the DWP’s enforcement role and budget it is inconceivable that the DWP would not have policies on evidence gathering by third parties.
 - c. The policies requested are not based on hypothetical scenarios as referred to in the decision notice [page 9 of the PDF hearing bundle [20]]. There is evidence within the bundle in terms of links to YouTube videos of individuals seeking to film at DWP sites.
 - d. There is a public interest in the production of the information. The YouTube videos show evidence of offences such as failure to disclose security licences and assaults on those filming. In addition, the videos show a significant security presence at DWP sites and it is alleged the use of force.
 - e. The case law relied upon by the Respondent can be distinguished from the current appeal. The case law relied upon relates to information that was either produced a significant number of years before the relevant request had been made or could be considered to be obscure. In this appeal a policy on evidence gathering could not be considered obscure or historic as it would be part of the DWP’s current policies.

Respondent’s Position

9. The Respondent’s position as set out within his written response can be summarised as follows:
- a. The Respondent maintained his position as set out within the decision notice.
 - b. The DWP provided evidence of electronic searches carried out internally and consultations with staff located in the relevant departments to find any relevant information. The Respondent was satisfied that, on the balance of probabilities, no further information was held by DWP in relation to the request.
 - c. The Respondent acknowledged the Appellant’s evidence regarding potential malpractice and abuses of power by DWP security staff in certain situations. However, the Respondent position was that these specific legal issues were outside the scope of the request for information and the remit the Tribunal.
 - d. Although, the Appellant may believe that more information should be held by the DWP in relation to his information request, this was not the scope of the Respondent’s investigation

into his complaint. The scope of the Respondent's investigation was to decide on the balance of probabilities, whether any more information was held by DWP in relation to the Appellant's information request other than that already disclosed. The Respondent was satisfied that, on the balance of probabilities, the DWP hold no more information in relation to the Appellant's information request.

Applicable law

10. The relevant provisions of FOIA are as follows.

General right of access to information held by public authorities.

(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.

.....

11. In determining whether or not information is held, the standard of proof is the balance of probabilities. It is rarely possible to be certain that information relevant to a FOIA request is not held somewhere in a large public authority's records. The Tribunal should look at all of the circumstances of the case, including evidence about the public authority's record-keeping systems and the searches that have been conducted for the information, in order to determine whether on the balance of probabilities further information is held by the public authority.
12. A relevant and helpful decision is that of the First-Tier Tribunal in Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072). In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.*"
13. In Oates v Information Commissioner and Architects Registration Board EA/2011/0138 at [11], the First-tier Tribunal stated "*As a general principle, the IC was, in the Tribunal's view, entitled to accept the word of the public authority and not to investigate further in circumstances, where there was no evidence as to an inadequate search, any reluctance to carry out a proper search or as to a motive to withhold information actually in its possession. Were this to be otherwise the IC, with its limited resources and its national remit, would be required to carry out a full scale investigation, possibly onsite, in every case in which a public authority is simply not believed by a requester.*"
14. In Councillor Jeremy Clyne IC and London Borough of Lambeth EA/2011/0190 [23] the Tribunal accepted that the Commissioner was entitled to accept at face value the response of a public

authority, where there was no evidence of an attempt to mislead the Commissioner, or of a motive to withhold information actually in its possession.

Issues and Evidence

15. The issue for determination in this appeal is whether the DWP holds information in relation to the Request that has not already been disclosed to the Appellant.
16. There is no dispute between the parties that FOIA is the correct regime in which to assess the information request.
17. By way of evidence and submissions we had an agreed bundle of open documents [139 PDF pages], Judge McKenna's refusal of the Respondent's application to strike out and Final written representations of the Appellant dated 23 December 2023, all of which we have taken into account in making our decision.

Discussion and Conclusions

18. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision. We deal in turn with the issues.

Scope of the Appeal

19. The evidence and submissions produced in this appeal in part relate to the legality of filming at DWP sites and the legality of force that is alleged to have been used to prevent filming. In addition, there is a suggestion that given the desire of individuals to collect evidence within DWP sites, the DWP should have or produce a policy in relation to evidence collection. It is important to note that production of policy is beyond the scope of this appeal. The Tribunal is only concerned with whether the information requested is held by the DWP.

Nature of the Request

20. When the request is read as a whole it is clear that it is a request for policies relating to filming at DWP sites for the purposes of evidence collection and the G4S and DWP response to prevent filming together with any associated consequences such as witness harassment and perverting the course of justice.

The Case Law and the Standard of Proof

21. At Section II of the Appellant's reply dated 24 November 2023 titled "legal standards upon which the Respondent relies" the Appellant sets out why the case law relied upon by the Respondent can be distinguished from the current appeal. The Appellant asserts that the information requested within the cited case law was historic, obscure or related to details that would be considered small or insignificant. The Appellant asserts this can be contrasted with the current appeal which concerns matters of criminal law and victims of crime or witnessing a crime. At the hearing, the Appellant was asked to confirm whether he disputed that the relevant standard in this case was the balance of probabilities. The Appellant stated that he did not dispute the

standard rather the Appellant clarified that the factual matrix of the cases relied upon was such that the information was historic, obscure or related to very specific details. Accordingly, appropriate searches quite properly may not have revealed the relevant information's existence. However, the Appellant said that in this case the policy was of such significance that reasonably appropriate searches would reveal its existence.

Searches Conducted by DWP

22. In Response to questions raised as part of the Respondents investigation the DWP confirmed that its methodology for searching was to conduct searches on the internal intranet site of the DWP and of the DWP's SharePoint system. Searches were conducted electronically against several areas of the DWP's business to include "people and capability, security and data protection and estates. The search terms that were used were "filming in job centres/DWP premises "unauthorised filming" and "unacceptable customer behaviour". In addition, the DWP confirmed that it consulted colleagues in the relevant subject areas. The DWP confirmed there was no known deleted and destroyed information. Information would only be deleted or destroyed because it was no longer a relevant policy and as such would be outside the scope of the request.
23. In his new evidence document dated 26 November 2023 and final written representation the Appellant relies upon extract of a text titled "*Welfare, Damien. Cornerstone Information Law. Bloomsbury Publishing, 2019*" together with evidence from the AI source ChatGPT.
24. In our judgement the paragraph extracted from the relevant text does little more than establish that the DWP is required to supply evidence of the conduct of the search and the places searched; the standard is the balance of probabilities and the DWP is required to show it conducted a proper search of the places where the information could be expected to be, together with suitable enquiries of staff and systems. In our judgement the Respondent does not dispute that the DWP is required to satisfy these requirements. In our judgement the responses given to questions raised by the Respondent at investigation and detailed above are evidence of the searches conducted. The question becomes whether the searches are proper in light of their scope, the places that were searched and the enquiries made of staff.
25. The Appellant relies upon the ChatGPT evidence. The Appellant describes his methodology as follows "the Appellant copied the text [*of the Request*] into ChatGPT and asked for it to write a list of the top 10 keywords for the FOI request if someone intended to search a database to meet that request". The Appellant states that the following terms were listed by the AI tool:
 - a. Staff conduct policy
 - b. Jobcentre security procedures
 - c. G4S staff roles at Jobcentres
 - d. Evidential collection policy
 - e. Use of force guidelines
 - f. Preventing evidence collection
 - g. Criminal misconduct investigation
 - h. Witness harassment prevention
 - i. Private prosecution for misconduct
 - j. England and Wales justice system

26. The Appellant asserts that the analysis carried out by an independent AI system identifies appropriate searches which are very different from those carried out by the DWP. The Appellants asserts the DWP searches focused on filming and unacceptable behaviour. The searches should have focused on collection of evidence. The implication being that the search terms used were too narrow. In addition, the Appellant asserts that the language used in the decision notice when referring to policies in particular “dedicated specifically to” indicates that search results of the DWP did return documents relevant to the FOIA request but they were not dedicated specifically to the examples set out in the FOIA request. The Appellant asserts that these were merely examples set out in the request and he was not seeking and did not expect a dedicated policy statement in relation to these examples. The implication being that the DWP’s policies in relation to the collection of evidence could be comprised within more broad policy statements such as those that “refer to crime or investigation”.
27. Firstly, we must assess the weight that we give to the ChatGPT evidence. We place little weight upon that evidence because there is no evidence before us as to the sources the AI tool considers when finalising its response nor is the methodology used by the AI tool explained. If comparisons are drawn to expert evidence, an expert would be required to explain their expertise, the sources that they rely upon and the methodology that they applied before weight was given to such expert evidence. In the circumstances we give little weight to the ChatGPT evidence that searches should have been conducted in the form set out within that evidence.
28. In terms of the Appellant’s assertion that the searches were too narrow, we do not agree. As set out above emphasis within the request was on filming for the purposes of evidence collection and the consequent use of force to prevent such filming and the associated impact on justice and witness. In light of the scope of the request “filming in job centres/DWP premises “unauthorised filming” and “unacceptable customer behaviour” are considered reasonable terms to locate the information if it were held. In our judgment, the sources searched to include an internal intranet site (where it is likely that policies would be held so they could be readily accessed by staff) and SharePoint database (where operational information is held) are proper and reasonable. In addition, we note that not only were searches conducted but relevant enquiries were made of staff in the estates and human resources department. Given that these are the departments that are likely to deal with the management of premises and complaints arising from interactions with staff at those premises we find that the enquiries made of staff are proper and reasonable. We find that when the electronic searches and enquiries of staff are considered as a whole it is more likely than not that the searches would have revealed the existence of information comprised within the scope of the request if that information was held.
29. In coming to this conclusion, we take note that searches revealed the existence of the document’s at pages 59 – 69 of the PDF hearing bundle. These are specific policies relating to filming at Jobcentres, audio recording and photography at Jobcentres together with draft warning letters to claimants who have engaged in unauthorised filming/sound recording at jobcentres. The documents produced go to the core of the request for information and were identified as being held through the electronic searches and enquiries of staff members. We find that this is strong evidence that the searches carried out by the DWP were reasonable proper and effective to identify information that was held by the DWP within the scope of the request.

Evidence to Demonstrate Further Information is Held

30. At the hearing, the Appellant was asked whether there was any specific evidence that he had to demonstrate that further information was held. The Appellant confirmed that he did not,

indicating that he did not have access to the DWP's records. The implication being that he would not have access to such evidence even if it were available.

31. The Appellant asserts that the DWP's annual budget and the size of the organisation is such that it would have a policy that related to evidence collection by claimants, the use of force against those who collect evidence and the consequent impact on justice. Firstly, we find that the DWP does have a policy in relation to evidence collection by filming or and photographing in its office. That policy is a blanket ban unless prior consent is obtained. In relation to an organisation which deals with sensitive information and potentially vulnerable claimants there is nothing implausible that the DWP would adopt such a blanket ban. We find that that it is speculative to assert merely due to the size of the organisation and its budget that it would have bespoke policies or carve outs from the general prohibition in relation to evidence collection by claimants or other interested parties.
32. The Appellant asserted that the DWP had a significant enforcement function whereby it would carry out its own investigations and collect evidence. The Appellant asserted that in the circumstances it was inconceivable that the DWP would not have a policy on evidence collection. However, when questioned the Appellant accepted that the DWP's enforcement policies would relate to the DWP's investigation of claimants rather than claimants investigations of the DWP. Accordingly, we find that the DWP's enforcement functions do not support the Appellant's assertion that a policy would exist in relation to collection of evidence by claimants, use of force and consequent impact on justice. We find it is more likely than not that the DWP's policies in relation to its enforcement functions would be outward facing regarding the collection of evidence by the DWP against claimants.
33. The Appellant refers the final paragraph of the Decision Notice which states "the Commissioner is satisfied that the DWP does not have any additional policies, based on hypothetical scenarios which may/may not occur". The Appellant asserts that the situation is not hypothetical. We find that The YouTube evidence supports the Appellant's assertion that filming with the intention of collecting evidence occurs within job centres and DWP premises. We accept that the YouTube evidence shows individuals attempting to film at claimed DWP offices and being escorted from the buildings. Accordingly, we accept the Appellant's assertion that these are not hypothetical situations. However, that such situations arise is not of itself evidence that there is a specific policy in relation to evidence collection by claimants or members of the public. This does not advance the Appellant's case that information relevant to the Request, other than that disclosed, is held by the DWP.
34. The Appellant asserts that There is a public interest in the production of the information because the YouTube videos show evidence of offences such as failure to disclose security licences and assaults on those filming. In addition, the Appellant asserts that videos show a significant security presence at DWP sites. However, the question for the Tribunal is whether or not the information is held. In FOIA requests the public interest is considered in relation to disclosure once it is established that the information is held. In this appeal the Respondent asserts that all information has been disclosed and no further information is held. The issue for determination by the Tribunal is whether information relevant to the request is held. Accordingly, matters of public interest are not relevant to the issues for determination by this Tribunal.
35. The Appellant asserts that the motive to withhold a policy, which would enable filming at DWP sites for the collection of evidence, was to discourage the filming inappropriate practices at DWP premises. However, there is no evidence to support this. Indeed, there is nothing in the

evidence that indicates that the DWP had a motive to withhold information relevant to the request.

36. In addition, the DWP have produced a number of policy documents in relation to filming at their premises. The policies provide that filming is prohibited unless certain exceptions apply .. The policy rationale for a general prohibition on filming, subject to exceptions, is entirely understandable given that personal information will be held at DWP offices and there will be other claimants at such offices who may potentially be vulnerable and may not wish their identity to be revealed by filming.
37. We find that the documents disclosed are detailed and have the character of a comprehensive internal policy on filming. For example, they consider:
- a. the adverse effect on staff of filming, data protection laws and protection from harassment.
 - b. appropriate exceptions to the general prohibition such as prearranged authority to record, customers recording their own interviews in private spaces and reasonable adjustments.
 - c. the claimant's right to access the DWP premises.
 - d. how to engage with individuals who are filming. For example, the document at page 59 of the PDF bundle provides that when filming starts *"Have on-site security maintain a safe distance and monitor the behaviour of the filmmakers to ensure there is no criminal behaviour. Physical contact should never be made unless in self-defence"*. The same policy goes on to state that where the situation escalates to *"direct physical confrontation, verbal harassment or trespass, in the case of privately owned landpolice advice and potential presence if not already called should be considered"*.
38. Accordingly, when the documents that have been disclosed are read as a whole we find, on the balance of probabilities, that they are the comprehensive policies of the DWP in relation to collection of evidence at their offices by way of filming. We find that the documents expressly set out exceptions to the general prohibition on filming. We find that if there were any express exception to the general prohibition in relation to evidence collection then it is more likely than not that this exception would have been expressly set out within these policy documents as other exceptions have been. For these reasons we find , on the balance of probabilities that the policy documents disclosed are the DWP's comprehensive policy as to evidence collection at its premises by way of filming recording or taking photographs.

Conclusion

39. We remind ourselves that the relevant standard is the balance of probabilities. We have found that there is no corroborative evidence to support the Appellant's assertion that the DWP holds the information in question. We have found that the information that has been disclosed, when considered and on the balance of probabilities, is the DWP's comprehensive policy on evidence collection by filming at its offices which is indicative there is no further information. We have found that the DWP has carried out appropriate searches which confirm that the information is not held. There is no evidence to support the assertion that the Respondent has a motivation to withhold information within the scope of the request. For all of the reasons set out within this paragraph we find, on the balance of probabilities, that the DWP does not hold any information within the scope of the Request that has not already been disclosed.

40. We dismiss the appeal and uphold the Decision Notice.

Signed *G Wilson*

Date: 9 April 2024

Judge of the First tier Tribunal