



NCN: [2024] UKFTT 00598 (GRC)

Case Reference: EA-2024-0040

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

**Heard by Cloud Video Platform
Heard on: 28 June 2024
Decision given on: 9 July 2024**

Before

**JUDGE SOPHIE BUCKLEY
MEMBER PAUL TAYLOR
MEMBER AIMEE GASSTON**

Between

MOHAMED MOHAMOOD ABDULLAH

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: In person

For the Respondent: Did not attend

Decision: The appeal is dismissed.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC- 268587-Y4T7 of 29 January 2024 which held that the Ministry of Defence (the MoD) was entitled to rely on section 14(2) of the Freedom of Information Act 2000 (FOIA) to withhold the requested information.
2. The part of the appeal that relates to a request for information made on 19 July 2023 was struck out by a decision of the Registrar dated 18 April 2024. The remainder of the appeal concerns a request for information made on 22 July 2023.
3. There are two relevant previous tribunal decisions: EA/2020/0105 and EA/2022/0084. This is not a consideration of an application for permission to appeal against either of those decisions. This tribunal has no power in this appeal to review those decisions.
4. The appellant is resident in Ethiopia. Prior to the hearing in EA/2022/0084 a referral was made to the Taking of Evidence Unit on the appellant's behalf to seek permission for him to give oral evidence from abroad at the hearing. That permission was refused and accordingly the appellant was precluded from giving oral evidence at that hearing.
5. In the current proceedings the appellant had made a number of written requests to the tribunal that he be given the opportunity to give oral evidence at today's hearing. He specifically requested in those written requests that the tribunal confirm if the government of Ethiopia had changed its previous position.
6. Unfortunately it does not appear to the panel hearing the appeal that any action was taken by the tribunal in response to those requests.
7. I explained this to the appellant at the start of the hearing and apologised for the lack of response. I indicated that without that permission the appellant would not be able to give oral evidence in the hearing today, but could rely on his written statement and make oral submissions. The appellant stated that he understood and was content to proceed on that basis.
8. Given the issues that we had to determine, it was the tribunal's view that it was in the interests of justice to proceed on the basis of the written statement.
9. English is not the appellant's first language. The tribunal was able to understand the appellant. The appellant asked the Judge to speak slowly and if he did not understand, asked for the matter to be repeated. The tribunal was satisfied that that the appellant was able to understand and be understood and that it was able to conduct a fair hearing.
10. The tribunal received a number of emails from the appellant between the date of the hearing and promulgation of this decision. The tribunal read and took account of any emails received up to the date the finalised decision was approved by the members and sent to the administrative staff to promulgate on 8 July 2024.

Factual and procedural background

11. The factual and procedural background to this appeal is set out fully in the decision of the tribunal in EA/2022/0084 at [15] to [26] which the tribunal adopts.
12. In essence, the appellant had been told by his father, now deceased, that he served in the legal service of the 1st Battalion of the Queen’s Own Cameron Highlanders in the conflicts in Singapore, Brunei, Borneo and Aden.
13. He states that his father is British by descent and had registered the appellant’s birth as a British Citizen at the British Consulate and High Commission in Nairobi. Following his father’s death the appellant had contacted the British Consulate and High Commission in Nairobi to apply for a British passport. As part of this process he was asked to obtain his father’s service records to support his request for late registration of his birth.
14. On 3 September 2019 the appellant made a request for information by way of submitting a form entitled Search document, Application Part 2 – Royal Navy/Royal Marine Specific’. This is a form used to request service records of Royal Navy or Royal Marine Personnel from the RN disclosure cell, which holds service records for commissioned and non-commissioned officers (both Royal Navy and Royal Marines) from 1924 onwards.
15. The form is at page A98 of the bundle. It included the following information. The entries in the right-hand column are a direct transcription of the handwritten information written by the appellant on the form:

Surname	HASAN
Full Forenames	MOHAMOOD ABDULLAH
Official Service Number	ARP.008809
National Insurance Number	
Service Career, e.g. Date(s) of joining or leaving RN/RM etc.	MY FATHER HAS JOINED TO THE ROYAL NAVY IN 1944. HE PASSED AWAY ON 09/01/2013 AND HE DID NOT RESIGN FROM THE ROYAL NAVY
Date and Place of Birth	BERBERA – 1933
Record of Service: Any other information (i.e. that may help identify the Service record)	MY FATHER WAS MEMBER OF THE ROYAL NAVY. HE ATTENDED KOREAN WAR 1953 AND SUE (sic) CANEL (sic) WAR 1956. ALSO HE ATTENDED EAST COLD WARS BETWEEN BRITISH AND ARAB.

	<p>HE SERVED IN ADEN COLONY AND HE ATTENDED LITTLE ADEN COLD WAR BETWEEN BRITISH AND ARAB. MY FATHER TOLD ME. HE WOUNDED HIS NECK AND HAND IN THE WARS. HE DID NOT RESIGN WHEN HE DIED. HE DID NOT GET HIS RIGHT WHEN HE DIED 2013.</p>
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16. The MoD treated this as a request under FOIA and responded on 25 September 2019 stating that they did not hold any service records for Mr. Mohamood Abdullah Hasan having served in the Royal Navy.
17. In its internal review that MoD extended the search to include the archives of the British Army and the Royal Air Force.
18. The appellant complained to the Commissioner and appealed the Commissioner's decision to the First-tier Tribunal (EA/2020/0105).
19. The First-tier Tribunal, in a decision dated 29 September 2021, decided (i) that the MoD had not conducted sufficiently detailed searches to locate the service records of the appellant's late father and (ii) the MoD had not provided the advice and assistance required under section 16 FOIA. The MoD was required to provide a fresh response to the request.
20. Although it is unclear to us whether the appellant had provided any supporting documentation to the MoD in September 2019, the tribunal in EA/2020/0105 found that he had, and that the request should be interpreted in the light of that supporting documentation.
21. The tribunal in EA/2020/0105 stated the following about the scope of the request:

“Before relying on the assertion of the MOD that “extensive” searches had been made, the Information Commissioner should have critically analysed the statement in the light of the searches actually undertaken in the context, not only of the request but also the wider circumstances revealed by the documents submitted in support. Had she done so, she would have noted the different formulations of the appellant's father's name and the broader context of the explanations about how he might have served the Crown.” [49]

“The appellant had framed his request in terms of his father's service record with the Royal Navy based on his belief; however on closer inspection the request was intended to elicit information about how his father had served the Crown in the named conflicts. The appellant had provided a number that transpired not to be one used within any of the British Armed forces. He had provided a name which could be formulated in more than one way. He had described his father as a Royal Navy soldier and also as part of the army. In combination with the context set out in the documents the MOD had enough information to conclude that there was a possibility that the appellant's father

had served alongside British forces in the forces of another nation but stated that there was no useful advice or information they could provide to help identify that country.” [55]

22. In the light of that decision, the MoD provided a fresh response to the request on 22 November 2021. That letter detailed the searches that had been carried out and stated that the MoD held no information. The searches undertaken are set out in full in the decision EA/2022/0084 at [65] and included:

22.1. Searches of the service records of the Royal Navy, Royal Marines Reserve, the Army, the RAF for different versions/spellings of the appellant’s father’s name.

22.2. Searches of the MOD civilian records held by the Defence Business Services (DBS) for different versions/spellings of the appellant’s father’s name.

23. The MoD stated that all reasonable searches of the relevant areas of the MoD had been completed and there was no record of your late father having served in any branch of the British Armed Forces. The letter continued:

“I find that, on the balance of probabilities, it is likely that your father was a ‘locally employed’ person who was engaged by, but not a member of, the Royal Navy or any other Service. To try and determine what kind of work he may have undertaken I asked for further historical research to be undertaken on your behalf.”

24. The letter provided the outcome of that historical research which indicated that individuals from the British Protectorate of Somaliland (now Somalia) were able to serve with the RN as ‘Locally Entered Personnel’. The Somali ratings were normally engaged for periods of 2½ years’ service, either on shore (for example in dockyards) or on ships, up to the age of 50. The Somali ratings were administered by the Resident Naval Officer (RNO), Aden, who kept a roster of Locally Entered Personnel. The letter stated:

“Despite the extensive searches conducted in all relevant archives within the MOD, we have not been able to locate any information that confirms what happened to these rosters once the withdrawal from Aden took place. However, they are not held with the RN Rating service records at Swadlincote.”

25. In the letter the MoD then gave some further potential avenues of enquiry under section 16 (advice and assistance):

“I can advise that some information relating to the British Colony of Aden is held at The National Archives, the Imperial War Museum, and the British Library. It is possible that the rosters maintained by the RNO Aden may have been transferred to one of these repositories if they were not destroyed following withdrawal. You can contact these organisations directly to continue your research using the following contact details:
...”

26. The appellant complained to the Commissioner and appealed to the First-tier Tribunal (EA/2022/0084). In a decision dated 18 October 2022, the tribunal concluded that,

given the nature and extent of the searches which the MoD had undertaken and the absence of any evidence regarding any additional searches that could have been undertaken, the Commissioner was correct to conclude that, on the balance of probabilities, the MoD does not hold the requested information. The tribunal further concluded that the MoD had complied with its duties to provide advice and assistance.

27. On 21 October 2022, the appellant made an application to the Tribunal to appeal the decision in EA/2022/0084 to the Upper Tribunal (“UT”)
28. On 14 November 2022, the tribunal refused to grant the appellant’s application for permission to appeal to the UT.
29. On 15 November 2022, the appellant renewed their application for permission to appeal by seeking permission directly from the UT. The permission to appeal was subsequently given the UTT reference UA-2022-001664-GIA.
30. On 15 December 2022, the UT refused to grant the appellant’s application for permission to appeal.
31. On 28 February 2023, the appellant made an application to set aside the UT’s refusal to grant permission to appeal.
32. On 7 March 2023, the UT refused to grant the appellant’s application to set aside the UT’s refusal to grant the appellant permission to appeal.

Requests, Decision Notice and appeal

The request on 19 July 2023

33. The appellant made the following request to the MoD on 19 July 2023:

“I am Submitting to the Ministry of Defence forNew [sic] Request for Information about my father's Service record to apply my British Passport'

This request is new and subject to the Ministry of Defence's Finding on 22 November 2021 that my father was a Locally Employed person who was engaged by the British Armed Forces.

Please Register my NewRequest [sic] for Information about my father's Service Record.”

34. The appeal in so far as it relates to the request on 19 July 2023 has been struck out.

The request on 22 July 2023

35. The appellant made a further request on 22 July 2023, which is the subject of the remainder of this appeal

“1. Thank you for your response on 22 November 2021 which you stated that the Ministry of Defence found that my father was Locally Employed Civilian who was engaged by the HM Forces.

2. On 19 July 2023, I sent you my request my father's Service Record pursuant to the MOD finding my father's Service record under 1 (1) of FOIA 2000.

3. This request is subject for the MOD's finding that my father was Locally Employed Civilian who was engaged by the HM Forces.

4. I am requesting my father's service record to apply for my British Passport, and this request made under s1 of FOIA 2000.”

36. The tribunal notes that references to this request, including for example the response to the request, sometimes mistakenly date it as 24 July 2023.

The MoD's reply

37. The MoD replied on 21 August 2023. It stated that it was not obliged to comply with the request, relying on section 14(2) FOIA (repeated requests) on the basis that the appellant had previously submitted a request for his late father's service record and the MoD had issued a response on 22 November 2021 which informed the appellant that all reasonable searches had been completed and there was no record of his late father having served in the Armed Forces or as a locally employed civilian.

38. The MoD upheld its position on internal review.

The Decision Notice

39. The Commissioner concluded that the MoD was entitled to rely on section 14(2). He was satisfied that the appellant's requests of 19 and 24 July 2023 were repeated requests for the reasons advanced by the MoD. He stated that the MoD had informed the complainant on 22 November 2021, in response to a previous request he submitted to the MOD on 3 September 2019, that it did not hold any information regarding his late father's service record. The Commissioner agreed that the appellant had not provided any evidence which would require different or new searches to be conducted for any relevant information about such a service record. Given the extensive nature of the MoD's searches following the Tribunal decision, the Commissioner was satisfied that any response to this request would be likely to reach the same decision that the information is not held.

Notice of Appeal

40. The appellant's grounds of appeal are as follows:

“The Ministry of Defence confirmed in the outcome of the personnel service records searches in its response on November 22, 2021 that it had found that my father was “locally employed” person of the British armed forces, and had not conducted searches in the “locally employed” personnel records in the British Army.

So that, the Commissioner’s decision remained silent on the absence of the searches of the “locally employed” personnel records in the British Army. Therefore I am satisfied that the Commissioner's decision is wrong.”

41. In Section 8 of the appeal form there is a box that asks the appellant to specify what outcome he is seeking from the appeal, in that box he stated:

“As the Ministry of Defence refused repeated request of my father's records from the First Battalion, The Queen’s Own Cameron Highlanders, and preferred to consider extensive of searches, I agree, and I am wishing from the First-tier Tribunal (GRC) to consider for extensive of search at the original request on (Sep 3 2019) that way I sent a copy of that request”

The Commissioner’s response

42. The Commissioner applied in the response for the appeal to be struck out. Although the Commissioner asked for the document to stand as the response if the appeal were struck out, it does not address the substance of section 14(2).
43. In essence the Commissioner submitted:
- 43.1. None of the grounds of appeal address the application of section 14(2)
 - 43.2. If the appeal was allowed, the MoD would have to issue a fresh response when they have already spent over 50 hours conducting comprehensive searches. The MoD, have, contrary to what the appellant thinks, carried out searches for locally employed personnel. It would not be fair or just for the tribunal to determine matters that have already been decided on the balance of probabilities.

Evidence and written submissions

44. We have before us and have read:
- 44.1. An open hearing bundle.
 - 44.2. A written statement from the appellant dated 21 June 2024.
 - 44.3. Any additional emails/written submissions from the appellant sent in between after the bundle was prepared and before this decision was finalised.
45. We did not hear any oral evidence from the appellant.

Legal framework

46. Section 14(2) FOIA provides:
- “Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

The Task of the Tribunal

47. The tribunal's remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

48. The issues we have to determine are as follows:
1. Are the requests of 3 September 2019 and 22 July 2023 substantially similar?
 2. Had a reasonable interval elapsed between compliance with the request of 3 September 2019 and the request of 22 July 2023.

Oral submissions of the appellant

49. The appellant relied on the matters set out in his statement submitted on 21 June 2024. He also submitted a document headed 'My presentation of the Hearing on June 28 2024'. We took both those documents into account.
50. In summary in those documents the appellant submitted that the MoD had not conducted any searches of the 'locally employed' personnel records of the Army, in particular of the 1st Battalion of the Queen's Own Cameron Highlanders, as opposed to the 'locally employed' personnel records of the Navy.
51. In oral submissions he said, in summary, as follows:
- 51.1. He is aware that the appeal is not about his nationality but is about a request for information.
 - 51.2. He needs his father's service file.
 - 51.3. The MoD did not conduct searches of locally employed personnel in the British Army.

Discussion and conclusions

Are the requests of 3 September 2019 and 22 July 2023 substantially similar?

52. In construing the scope of the request made on 3 September 2019, we consider that it is appropriate to consider the objective meaning of the request construed in the light of all the relevant surrounding circumstances. In our view, it is appropriate to consider the relevant surrounding circumstances on the date that the MoD complied with the request. Although the MoD initially responded to the request in September 2019, they were found not to have complied with FOIA by the tribunal in EA/2020/0015. They complied with the request on 21 November 2021.
53. At that date, the scope of the request had been considered by the tribunal in EA/2020/0015 and the MoD was in possession of a number of supporting documents. It is also appropriate for us to take into account the findings of the tribunal in EA/2022/ 0084 on the scope of the request.

54. In the light of that information and the previous tribunal decision, objectively considered, we agree with the MoD's interpretation of the scope of the request in November 2021, i.e. we find that the scope of the request includes all that information searched for by the MoD and set out in its letter of 21 November 2021.
55. Thus, we find that the request, looked at in the light of the surrounding circumstances was for:
- 55.1. Any service records relating to the appellant's father's service with any of the armed forces.
- 55.2. Any 'service records' in the non-technical sense relating to the appellant's father's engagement by any of the armed forces as a 'locally employed' person.
56. We note that the appellant appears to agree that these were the searches required as a result of his 2019 request, although in his view the MoD's searches were inadequate because he says that they have only searched for the second element in relation to the Navy, rather than in relation to the Army.
57. The scope of the request made on 22 July 2023 was, we find, substantially similar. The request explicitly asked for 'service records' but this was clearly meant in a non-technical sense, because the request specifically stated that it was 'subject for [sic] the MOD's finding that my father was Locally Employed Civilian who was engaged by the HM Forces'.
58. Given that the scope of the latter request is entirely covered by the first request, we find that the requests were substantially similar.
59. We note that the appellant is of the view that the MoD has not searched for records of locally employed persons where those persons were engaged by the Army rather than the Navy. As this falls within the scope of the request in September 2019, this would have been a matter for the tribunal in EA/2022/0084 to determine.
60. However, it may assist the appellant to know that our interpretation of the letter of 21 November 2021 is that the MoD's searches of the records of locally employed civilians was not limited to those engaged by the Navy but extended to all forces. The MoD say as follows:
- "As DBS manage the MOD civilian records, I asked them to search their records. I can advise you that, while records for persons with names similar to your father were found, these did not match the other details you provided (date of birth and date of service)."
61. We accept that there is a reference earlier in that paragraph to the possibility of the appellant's father serving 'with' the Navy, but there is no indication that the MoD asked DBS to limit their searches to MoD civilians who served 'with' (rather than 'in') the Navy, and to exclude from their searches civilians who served with the other forces. Indeed, given that the MoD searched the service records of all forces this would have been surprising.

62. This limitation would have been particularly surprising given that the stated outcome of the searches in the November letter was that the MoD had concluded on the balance of probabilities that the appellant's father "was a 'locally employed' person who was engaged by, but not a member of, the Royal Navy or any other Service" (our emphasis).
63. On that basis, we do not accept that it is right to imply that the MoD's searches of the records held by the DBS were limited to civilians engaged by the Royal Navy. In our view, a natural interpretation of the letter is that DBS were asked to search their records for persons with names similar to the appellant's father, without limitation in relation to the relevant service.
64. We accept that the historical research undertaken by the MoD was only focussed on the Navy but that is not something that is required by either the 2019 or the 2023 request.

Had a reasonable interval elapsed between compliance on 22 November 2021 and the request of 22 July 2023?

65. The likelihood that the information will differ significantly from what was previously provided will be a relevant factor in many cases where section 14(2) is relied on. The information in issue in this appeal is historic, in the sense that it is not going to change, so this consideration does not assist us.
66. The length of the interval will always be a factor in its reasonableness. In this appeal there is a period of 1 year and 8 months.
67. When assessing the reasonableness of that interval, in our view it is likely to be appropriate to take into account factors such as the appellant's explanation for why a new request is needed or appropriate; any changes that might influence the engagement of the exemption originally relied on or that might affect the public interest balance; any other relevant events since the first request; and the likely burden of complying with another request after this interval in time.
68. In our view in this appeal there is no significant difference in burden between complying with the latter request and relying on section 14(2) in relation to the latter request. This would be the case whatever the interval. This factor does not materially assist on these facts in deciding if the interval is reasonable.
69. The appellant's explanation for the new request is, in essence, that the MoD has not searched for civilian records in relation to forces other than the Army. We have found that this was within the scope of the original request, and therefore any challenge as to the adequacy of searches could and should have been made in EA/2023/0084. It is of note that the second request was submitted only four months after the proceedings arising out of the first request were concluded in the Upper Tribunal. The fact that the second request appears to be another attempt to challenge the adequacy of the searches in the first request and was made shortly after the conclusion of proceedings challenging the response to the first request suggests, in our view, that the interval is not reasonable.

70. There are, in our view, no other factors that might justify a repeated request after such a period of time. This is not a case where events have occurred since the first request that might affect the engagement of an exemption or where the public interest might lie, in the main because the public authority gave a 'not held' response to the first request.
71. The appellant provided no new information in the latter request that the MoD were not already aware of when they complied with the first request. The MoD has been provided with no new information that suggests that a new search would reveal more information than was revealed by the search in November 2021.
72. Taking all those factors into account we have decided that the interval that had elapsed of 1 year and 8 months, was not, in all the circumstances a reasonable interval.
73. For those reasons the appeal is dismissed.

Observations

74. We have a lot of sympathy for the appellant. We appreciate that further research may not assist him with his application for a British Passport, but we do note that although the MoD have been unable to locate a service record, probably because the appellant's father served 'with' rather than 'in' the British Armed Forces as a 'locally employed' person, they have provided him with some details of organisations that may hold further information on his father which he could follow up if he wished.

Signed

Date:

Sophie Buckley

8 July 2024