
From: Patrick Bourke [GRO]
Sent: Tue 14/06/2016 3:40:46 PM (UTC)
To: Melanie Corfield [GRO]
Cc: Rodric Williams [GRO]
Subject: RE: Freedom of Information request - Misconduct in Public Office

Mel

Many thanks. Subject to Rod's view, which is critical on this, I genuinely suspect that all of the information he is looking for is justifiably exempt information under s42 FOIA, which is the legal privilege exemption. Moreover, in my view, a Neither Confirm Nor Deny decision could be appropriate in this context since revealing not the content but the existence of the information would, in and of itself, necessarily reveal information which is properly exempt under s42.

As I say, that is my view, but can't substitute for legal advice on this point - it's pretty sensitive stuff.

Rod - what do you think ? Do you think it worth asking BD for a view ?

Best wishes

Patrick

-----Original Message-----

From: Melanie Corfield
Sent: Tuesday, June 14, 2016 4:13 PM
To: Patrick Bourke
Cc: Rodric Williams
Subject: FW: Freedom of Information request - Misconduct in Public Office

Hi Patrick

Re Kerry's reminder on McCormack's FOI.

The 'matter' on which McCormack is asking for information is actually his assumption in the previous paragraph (i.e. he is essentially asking for correspondence that reports potential wrongdoing of withholding evidence). The two relevant paras are : I therefore assume that POL, having read the documents above, has been aware of the possibility that a member of their staff is possibly guilty of withholding relevant evidence during the trial of Seema Misra, in total disregard to their policy stated in 3) above. Therefore could you please supply me with all correspondence you have entered into with either the Police, the CCRC or Crown Prosecution service in order to report this matter to them.

My view is that we would want to apply exemption (probably Legal Privilege, can check with Kerry?) whereby it is also made clear to him that we do not have to confirm or deny holding information so that our response provides no information at all but that this refusal cannot be misconstrued.

We could also use any exemption that might apply if there is current litigation plus public interest (again I need to quiz Kerry re what is appropriate)?

Ideally I think it would be good to end up with a short rebuff and a few exemptions and brief mention that the case is with CCRC who have access to all available material.

Let me know your thoughts/ if you've any time to discuss. Much appreciated.

Mel

-----Original Message-----

From: FOITEAM
Sent: 13 June 2016 10:45
To: Rodric Williams
Cc: Patrick Bourke; Melanie Corfield
Subject: RE: Freedom of Information request - Misconduct in Public Office

Hi All,

This is just a gentle reminder of the request below, which is due for a response on Monday, I have attached a template for the response which I am happy to complete if I am provided with the wording or outcome of your consideration of the request.

Many thanks,

Kerry Moodie
Information Rights Manager

1st Floor
Finsbury Dials
20 Finsbury Street
London EC2Y 9AQ

GRO

-----Original Message-----

From: FOITEAM
Sent: 20 May 2016 12:21
To: Rodric Williams
Cc: Patrick Bourke; Melanie Corfield
Subject: FW: Freedom of Information request - Misconduct in Public Office
Importance: High

Hi Rod,

Please see request below from Tim McCormack which has been received through the WDTK website.

Regards,

Kerry Moodie
Information Rights Manager

1st Floor
Finsbury Dials
20 Finsbury Street
London
EC2Y 9AQ

Telephone: **GRO**

Mobile: **GRO**

-----Original Message-----

From: Tim McCormack [mailto:**GRO**]
Sent: 20 May 2016 10:38
To: FOIA
Subject: Freedom of Information request - Misconduct in Public Office

Dear Post Office Limited,

First let me provide you with some information that will make your handling of this request a little easier and a little more difficult at the same time.

1) In October 2010 POL prosecuted Seema Misra at Guildford Crown Court. The transcript of that trial is now in the public domain.

2) The Second Sight Report dated April 2015 is also in the public domain.

3) POL has stated publicly the following:

If the Post Office decides to prosecute a case, its conduct of the prosecution is scrutinised by defence lawyers and ultimately by the Courts themselves. The Post Office has to satisfy both stages of the Code for Crown Prosecutors to start a prosecution: the evidential stage requires us to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction, and the public interest stage which requires us to consider whether a prosecution is in the public interest.

We are duty bound to communicate with a defendant's lawyers, and any decision by a defendant regarding their plea is made after he or she has had the opportunity to take private and confidential legal advice and consider, with lawyers, all the available evidence. The evidential requirements for proving the offences of theft or false accounting are a matter of law.

Post Office as a prosecutor has a continuing duty to disclose immediately any information that subsequently comes to light which might undermine its prosecution case or support the case of the defendant.

4) From the Second Sight Report:

14.11. This document refers to correcting live data - a procedure that Post Office denied was possible. Of potential significance is the fact that this was not just an internal document made available to a small number of Fujitsu employees, as the copy we were provided with was printed out by the head of Post Office's Legal Prosecution team in October 2010.

14.12. A further document titled "Receipts / Payments Mismatch issue notes" appears to be a Minute of a joint Post Office / Fujitsu meeting probably held in August 2010. The document refers to the impact of the bug in Horizon as being: Page 31 "Impact * The branch has appeared to have balanced, whereas in fact they could have a loss or a gain * Our accounting systems will be out of sync with what is recorded at the branch * If widely known could cause a loss of confidence in the Horizon System by branches * Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data * It could provide branches ammunition to blame Horizon for future discrepancies".

I draw your attention to the relevant dates of the trial, the printing out of the document and the person who printed out the document.

I am sure that POL is aware that many, if not all, their employees are classed as holding public office. It is inconceivable in my opinion having researched this thoroughly that your Head of the Legal Prosecution team is not deemed to be a public officer in relation to the possibility of that person being indicted for the crime of Misconduct in Public Office (http://www.cps.gov.uk/legal/l_to_o/misconduct_in_public_office/)

I therefore assume that POL, having read the documents above, has been aware of the possibility that a member of their staff is possibly guilty of withholding relevant evidence during the trial of Seema Misra, in total disregard to their policy stated in 3) above.

Therefore could you please supply me with all correspondence you have entered into with either the Police, the CCRC or Crown Prosecution service in order to report this matter to them.

That was the easy bit. Now it becomes more difficult.

Looking back through the history of FOI requests to your organisation via this channel, you repeatedly and consistently wait until the very last day you are required to reply by before replying. I therefore can expect you to do the same with this request.

Your conundrum is therefore that should you have not already reported this matter to the relevant authorities (bearing in mind that I have done this for you already and I am sure you will hear from them in due course) then you are duty bound to do so as I have brought it now to your attention and there can be no further reasonable excuse. So by the time you are due to reply to this request you should have some correspondence to supply me with.

Good luck with getting out of this one but no doubt you will find a way.

Yours faithfully,

Tim McCormack

Please use this email address for all replies to this request:

request-335765-7a1a76ad@**GRO**

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