



IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)

Appeal No: EA/2014/0224

BETWEEN

RODNEY WHEELER

Appellant

and

INFORMATION COMMISSIONER

Respondent

Tribunal

Brian Kennedy QC  
Roger Creedon  
Narendra Makanji

Hearing: 25 February 2015.  
Location: Field House, London.  
Decision: Appeal Refused.  
Review: 27 August 2015.

**Subject Matter:** The Judgment in this appeal was given on 8 April 2015. This is a Review of that decision on foot of an application by the Appellant on the grounds that a note he sent to the Tribunal dated 20 December 2014, seemed not to have reached the Tribunal Panel in time for the hearing in February 2015.

**Introduction:**

1. This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“the DN”) dated 1 September 2014 (reference FER0511546), which is a matter of public record.

2. A paper hearing took place on 25 February 2015 when the Tribunal deliberated on the issues in this appeal and we will not rehearse that decision here but the Appellant sought a review of that decision on the basis that the Tribunal Panel (now reconvened) did not appear to have considered his note entitled “Comments by Appellant on the ABB Fire Assessment Redaction Decisions as tabled by the MOD’s table on 4 March 2014 and referred to in the Tribunal’s case management note of 2 December 2014”. It is acknowledged that his note, as described did reach the Tribunal but not in time to be included in the Open Bundle prepared for and used at the hearing and was therefore not considered by the Tribunal Panel at the hearing in February 2015. The Tribunal set aside its decision for the purpose of this review on 27 July 2015.

3. The Appellant made comments on the “ABB Fire Risk Report Redacted Decisions as tabled by the Ministry of Defence on 4 March 2014. His “Main Comments” can be paraphrased out as follows:

“No valid reasons are given for redacting out almost the whole of Appendices A, B and C, and substituting 30 virtually blank pages in the version of the ABB Report received by me on 3 October 2014. My aim from the start was to both know and understand in detail the risks from fires; and I expected to that the strong recommendation from the Buncfield Inquiry 2008 would be followed”

“By redacting out every number in the report and its Appendices, even those numbers already in the public domain, the Ministry of Defence demonstrate that their objective is to keep the public as unaware as possible of the risks. National Security would not be affected by allowing numbers already in the public domain to remain in place, which would then make even a redacted version easier to read and understand. The redaction by the Ministry of Defence took no account of the rule that redaction should not remove material not subject to the exception.”

4. The Appellant in his Comments goes on to describe the detailed information already in the public domain, inter-alia, but not exclusively, a detailed description of site, dimensions of pipes, topographical details of site, details of alarm systems, safety measures and migration of fuel etc.

5. Essentially he concludes at Paragraph 4.1 in his comments, of 20 December 2014, that most of the redactions in the ABB Report disclosed to him by the Public Authority, are of information already in the public domain.

6. He also makes the following observations;

(4,2) The Ministry of Defence failed to separate any new information of use to a potential terrorist from information already in the public domain, against the requirements of R12.11 EIR,

(4.3) All the information, which a terrorist might need, may be gained from observing the site from outside the fence, or from reports in the public domain and/or by spending an hour on the internet.

(4.4) The notion by the Ministry of Defence that a terrorist would seek to imitate or recreate one of the accident scenarios in the SR's seems to be a wrong judgment of what a terrorist might attempt.

(4.5) The public living close to the site boundary have a genuine need to know and understand the risks imposed on them without their agreement, as required by the Buncfield Disaster Inquiry and particularly from accidental fires.

(4.6) Understanding the detailed risks to people, properties and the environment from accidental fires requires all the information in the ABB Report and appendices.

(4.7) (In his view) The site in question is relatively undefended if chosen for an attack by a terrorist: the security and insecurity of the site are mostly independent of the contents of existing safety related reports including the disputed information in the ABB Report, redacted or not.

7. The Panel has considered his application to review in detail. Firstly all three members confirm that they have no recollection of seeing the appellants additional Comments and cannot say with any certainty that they were considered or were not before this Panel on 25 February 2015. We can understand how some confusion has arisen but having reflected on his comments and looking again at the papers before us and in particular the closed bundle including the disputed information of the Report and appendices we confirm that our Judgment on the overall appeal remains as before and we reject the appeal.

**Reasons:**

8. It appears to us that the Appellant has misunderstood the redacted decisions report provided by the MOD and in fairness, in our view, this is because he has been misled by description summaries as given by the Public Authority.
9. The descriptions in the 'justification for exception' column of the document setting out the reasons for the redactions does not, in some cases, appear to reflect the content of the redacted information.

**For example**

The justification for redactions on page 4 of the ABB Fire Risk Report (closed bundle) includes 'dimension of pipeline and control centre'. However, the list of redactions (column headed 'Details of exempt material') does not appear to include any material, which fits that description. The appellant has seen the 'justification for exception column' but not, of course, the list of redactions. This seems to have led to a certain amount of confusion on the part of the appellant who argues that the diameter and

length of every pipe on site is already in the public domain. It may be so but that is not the information that has been redacted.

Similarly, on page 16 of the Risk Report the justification for the redaction is given as 'location of control centre' but the list of redactions do not appear to fit that description. Again the appellant argues that that information is already available (he refers to page 117 of the bundle and other sources). However it appears not to be the same information.

There are other examples but it does not seem necessary to list each and every one.

It seems to us that the essential point is that the appellant has been misled to some extent by the descriptions in the 'justification for exception' column. He also correctly points out that in some cases no justifications are listed for the redactions on some pages.

10. However, the thrust of the Appellants argument for disclosure remains that much of the disputed information is already in the public domain and as he puts it; *'it is denied that the information in the requested Report would aid those intent on damaging the depot by information over and above that already in the public domain or potentially available to such people'* (page 36OB). The first sentence of this paragraph suggests that the appellant accepts that the exception is engaged.
11. This point was dealt with succinctly but comprehensively, in our view, by the Commissioner in the DN (para 23), which we have accepted. Nothing in the additional comments now being considered changes this fundamental position and our acceptance of it.
12. We find that the misleading/missing entries in the 'justification for exception' column have led to some misunderstanding by the Appellant. Further, we find that we are not persuaded that his conclusions as set out at paragraph 4 of his comments and repeated above at paragraph 6 above in any way counter the weight given to public interest and the points in favour of non disclosure already considered both by the Commissioner and this Tribunal at our earlier hearing. There is nothing new in these points and we have already considered them, as did the Commissioner in his DN.
13. For example, in paragraph 20 of our original determination we accepted the MOD arguments set out on page 98 OB. To quote: *"---- The Oil and Pipelines Agency is anxious to avoid placing in the public domain any information that would lead to a potentially hostile organisation or terrorist identifying plant, equipment, processes or any other information that could potentially enable vulnerabilities to be identified about particular areas of the site, target opportunities or safety equipment within the site"*. In our view this gives an all-encompassing rationale for the redactions, which seems to have been carried through in deciding what material should be reacted in the Risk Report. The Ministry of Defence attempt to be helpful by providing 'sub-sets' of excepted material has, in our view, served only to confuse.

**However, we have not been persuaded the Commissioner was wrong in his DN.**

**14. Accordingly our Judgment of 8 April stands and the appeal remains dismissed.**

**Brian Kennedy QC**

**31 August 2015.**