

J E Garner
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14th September 2020

Dear J E Garner

Freedom of Information Act (FOIA) Request – 200819024

Thank you for your email of 19th August, in which you refine your FOI request (ref 200803020). You have asked the MoJ for the following information:

My revised FOI is as follows, which will hopefully fall within the time and cost limit allowed, concentrating on the one Judgment, of Mr Ben Plaistow V Secretary of State for Justice, and ET Judge Ord's comments in relation to it. Case Number: 3400502/2016 as follows:

***Link to the ET Judgment Mr Ben Plaistow v Secretary of State for Justice (MoJ):
https://assets.publishing.service.gov.uk/media/5d00fa2140f0b60958f20bad/Mr_B_Plaistow_v_Secretary_of_State_for_Justice_-_3400502_2016_-_Preliminary_Judgment_on_Remedies.pdf***

Para. 59:

"The respondent's conduct, as an arm of the state, in relation to this case has been unacceptable as set out in the Merits Judgment. It has withheld documents, redacted documents incorrectly, corrupted documents to include information irrelevant to the claimant, all to the claimant's detriment, failed to properly transcribe an interview with Prisoner A (the "missing" sections which were perfectly audible and transcribable, assisting the claimant to a degree), produced documents which had been created far later than their stated date and admitted on oath that this was done to "plug the gaps", conducted oppressively and as an act of victimisation, investigatory dismissal and appeal proceedings, claimed CCTV footage had been deleted and then (although the claimant says only in part) disclosed it."

And Para. 61:

"For the avoidance of doubt, we are satisfied that the respondent's conduct in withholding of evidence including the hopelessly late disclosure of a number of obviously relevant documents; the tampering with, corruption of and the misleading after-the-event creation of documents and generally their conduct, including the conduct of a number of witnesses, which we have set out in this Judgment and the merits Judgment, was both conscious and contumelious."

https://assets.publishing.service.gov.uk/media/5d00fa2140f0b60958f20bad/Mr_B_Plaistow_v_Secretary_of_State_for_Justice_-_3400502_2016_-_Preliminary_Judgment_on_Remedies.pdf

Para 50. Based on the information presented to us, we have concluded that this investigation was only commenced after the enquiry from the claimant's solicitors and not before. No document indicating that any steps preparatory to an investigation had been taken before 20 March 2019 and no oral evidence of any steps being taken before that date has been produced to us. The delay in the presentation of the report is because the individual at the Government Legal Department charged with the production of a report into the conduct of the matter from the lawyer's side (who was also involved in the matter throughout as the relevant contact with the Tribunal), needed additional time to prepare her report because she was also preparing for the remedy hearing.

51. As a result of the above, we give very little credit indeed to the respondent for the investigation it is apparently conducting. We say apparently because we have seen no evidence of any steps being taken whatsoever in relation to the investigation. Mr Heavens could not tell us whether any of

the individuals whose conduct was found to be unacceptable, discriminatory, harassing and / or victimising by the Tribunal, had been suspended pending an investigation; he could not even tell us whether steps had been taken to ensure that they did not collude during the investigation and no information from the Investigating Officer to explain what steps he had taken to date, was before us. We have unanimously concluded based on the information (and lack of it) presented to us that the Respondent had taken no steps whatsoever to investigate the serious findings and the matters of concern which had been found by the Tribunal.

1. Please provide details of the outcome of the "separate internal review" carried out by the woman charged with doing so, in the Government's Legal Department, since 20 March 2019 to date, as described in Paras. 50 and 51 above.

2. Please provide details of anybody involved in the above ET case, guilty of the "forgery of documents" having been disciplined and/or dismissed as a result of the MOJ Legal Department's "Internal Review"

3. Please provide details of those responsible for the "corruption of and the misleading after-the-event creation of documents" as referred to in 59 and 61 above, has already, or will be referred to the Police for consideration of a prosecution for the criminal offence of forgery?

Your request is being handled under the FOIA.

I have considered your request for information, but I am unable to answer Questions 1 and 2 without further clarification. Section 1(3) of the FOIA does not oblige us to answer requests where we require further clarification to identify and locate the information requested.

So that I provide you with the right information, please can you explain what "separate internal review" you are referring to? Are you interested in the findings of the investigation (referred to in the penultimate sentence of Paragraph 47 in the Employment Tribunal judgment), or the report produced by the Government Legal Department (referred to in the final sentence of Paragraph 50 of the judgment)?

On receipt of this information I will continue to process your request. Please be aware that this is not an indication that we hold the information you requested, or that it won't be exempt from disclosure under one or more exemptions in the Act.

Yours sincerely

L. Picton
HMPPS Briefing & Correspondence Team