



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**Case No. EA/2015/0184**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FS50580832  
Dated: 28 July 2015**

**Appellant: THOMAS HOLLAND**

**Respondent: INFORMATION COMMISSIONER**

**On the papers: FOX COURT, LONDON**

**Date: 13 JANUARY 2016**

**Date of decision: 13 FEBRUARY 2016**

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**ROSALIND TATAM and NIGEL WATSON**  
Tribunal Members

**Attendance:**

For the Appellant: Mr T Holland in person.

**Written Submission:**

For the Respondent: Ms L Smith, Solicitor for the Information Commissioner.

**GENERAL REGULATORY CHAMBER**

**INFORMATION RIGHTS**

**Subject matter:**

Freedom of Information Act 2000

Absolute exemptions

- Personal data s.40 (5)

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 28 July 2015 and dismisses the appeal.

**REASONS FOR DECISION**

**Background**

1. Mr Thomas Holland (the Appellant) wanted to find out whether the former Prime Minister of Australia, Mr Tony Abbott, had both Australian and British citizenship.
2. He made an information request to the Home Office on 3 February 2015. He asked:

I am looking for the citizenship status of a person if they hold British citizenship or have they renounced it and if so the date renounced....  
Person Name: Anthony John Abbott DOB 4/11/1957.

3. After delay and confusion, none of which was caused by the Appellant, the Home Office clarified its position on 7 April 2015. It stated that it neither confirmed nor denied whether the requested information was held, relying on the exemption within section 40 (5) FOIA.
4. The Information Commissioner agreed that confirmation or denial of the Appellant's request would involve the disclosure of personal data of a third

party and that the disclosure would be unfair and in breach of the first Data Protection Principle.

5. On the basis that section 40 (5) FOIA was engaged the Home Office was not obliged to confirm or deny whether the information requested by the Appellant was held.

#### The appeal to the Tribunal

6. Both at the oral hearing and in his grounds of appeal the Appellant advanced his reasons for believing that the information, if it existed, should be disclosed.

7. In summary, his points were:

- (1) When he originally made the request, if an RN<sup>1</sup> form had been lodged by Mr Abbott before 26 March 1994, he would have understood why no further information would be provided.

- (2) If, however, no RN form had been lodged or if it had been lodged after 26 March 1994 then he would expect to be told; he had provided the Home Office with Section 44 of the Australian Constitution and a form which Mr Abbott had to fill out as the candidate in the Australian election.

- (3) If the Home Office knew that Mr Abbott submitted an RN form after the date in question – or if he had never submitted an RN form – then the Home Office should have passed that information to the Electoral Commission in Australia to investigate whether a fraud had been committed.

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<sup>1</sup> An “RN” form is a ‘Declaration of Renunciation of British Citizenship, British Overseas Citizenship, British Overseas Territories, British National (Overseas) Or British Subject Status’.

- (4) Equally, that information should have been passed on to the Australian Federal Police as well for investigation.
- (5) In his Grounds of Appeal, a satisfactory response would have been along the lines of: "Mr Abbott did not lodge an RN form on or before the date stated and the Home Office has passed this on to the relevant Australian authorities for further investigation." [Orally, Mr Holland agreed that such a response would have conveyed personal data.
- (6) The Appellant's understanding was that if a crime was suspected and reported to the Home Office then the Home Office had to report that to the relevant authorities and let them investigate it. Falsifying government documents was a very serious crime.
- (7) He further argued that there was a strong public interest in disclosure because of the issues that had been raised about Mr Abbott citizenship status.
- (8) There was a significant public interest in the Australian public knowing if the country's Prime Minister had obtained his position by fraudulent means.

Many journalists and media persons have tried to access this information. In 2013, Mr Abbott classified his immigration file as confidential when the media tried to access this. He is the only Prime Minister to do this, as anyone can access immigration files through FOIA here in Australia except his.

- (9) When the request was made to the British Home Office to either confirm that an RN form was lodged – or to pass information on to the relevant Australian authorities if a form was not lodged – that request should have been carried out. The Appellant should have been informed of the decision as the person making the request.

## Conclusion and remedy

8. The Tribunal reminded itself that Section 40 FOIA provided that personal data about third parties should not be disclosed to those making requests under FOIA if to do so would breach the data protection principles.
9. Section 40 (5) (b) (i) FOIA provides that a public authority is not obliged to confirm or deny that information is held where confirming or denying would breach any of the data protection principles embodied in the Data Protection Act 1998.
10. All that is required is to show that either confirmation or denial would engage the exemption.
11. In effect, the Appellant maintains that - if Mr Abbott was a British citizen on or after his election to the Australian Parliament on 26 March 1994 - then he is in breach of Section 44 (1) of the Australian Constitution.
12. The relevant provision is that a citizen of a foreign power "... Shall be incapable of being chosen or of sitting as a senator or member of the House of Representatives."
13. It is clear that the Appellant is concerned that Mr Abbott may have falsified an election form 60 and that if Mr Abbott had not renounced his British citizenship by completing an RN form until after 26 March 1994 then he would have committed fraud.
14. What the Appellant is seeking is clearly data that relates to a living individual who can be identified from the data or the data and any other information which is in his possession. The Home Office response relates to neither confirming nor denying whether the information is held and not about the actual content of the information.

15. The key issue is not whether disclosing the information would contravene the data protection principles but whether confirming or denying that it is held would do so.
16. The Tribunal has no difficulty in finding that confirmation or denial is the issue in this appeal.
17. The Tribunal has considered whether confirmation or denial would be unfair and in breach of the first data protection principle. It reminds itself of the point made in the leading case of *Common Services Agency v Scottish Information Commissioner* [2008] UK HL 47 at [7]:

In my opinion there is no presumption in favour of the release of personal data under the general obligation that [FOIA] lays down. The references which that Act makes to provisions of DPA 1998 must be understood in the light of the legislative purpose of that Act.... The guiding principle is the protection of fundamental rights and freedoms of persons, and in particular their right to privacy with respect to the processing of personal data.

18. The Tribunal agrees with the Information Commissioner's assertion (at Paragraph 29 of his Response dated 5 October 2015) that it is not within the jurisdiction of the Tribunal to consider whether there has been a breach of the constitution of a foreign country.
19. The Tribunal's jurisdiction is limited under section 58 FOIA to that of determining whether a Decision Notice, or the exercise of the Information Commissioner's discretion, was in accordance with the law.
20. Here, in terms of balancing the public interest in relation to confirming or denying whether information is held about Mr Abbott, Mr Abbott has a reasonable expectation of privacy given that the UK Home Office does not comment on the nationality status of *any* individual no matter who s/he is.
21. The Tribunal finds that confirming or denying whether the information requested was held would result in the disclosure of personal data which

would be unfair to the data subject and which would breach the first data protection principle.

22. For these reasons the Appellant's appeal is dismissed.

23. Our decision is unanimous.

24. There is no order as to costs.

Robin Callender Smith

Judge

14 February 2016