



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

Appeal Reference: EA/2019/0190

**Decided without a hearing
On 9 September 2019**

Before

**JUDGE HAZEL OLIVER
MR GARETH JONES
MR MIKE JONES**

Between

APOSTLES OF MUCHINJIKWA (UK)

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION

The appeal is dismissed.

REASONS

Background to Appeal

1. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 17 May 2019 (FS50806285, the “Decision Notice”). It concerns information sought from the Foreign and Commonwealth Office (“FCO”) about the location of Father Johane Masowe’s rod, white garment and book, which the appellant says were taken from him at Matsine (in present day Zimbabwe) in 1932.

2. The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

3. On 8 September 2018 the appellant made the following request for information (the "Request"):

"We have been to the National Archives of the United Kingdom today, where we have been searching for documents that links to location of Father Johane Masowe (Baba Johane Masowe of Zimbabwe)'s rod, white garment and a book, which were taken from him at Matsine (Marondera) around 1932 and reportedly brought to the United Kingdom. After searching through the records at the National Archives and also getting support from the National Archives staff, it has been suggested that we should make a request through the Freedom of Information. We therefore officially request for any information in relation to the items mentioned i.e. their location and the records that link's them to that location including any other information with regards to the items."

4. The FCO initially responded saying that the Request was too broad, and the appellant limited the timeframe of the Request to 1931 to 1940. The FCO responded on 9 October 2018 saying that it could not locate any information that was relevant to the Request.

5. The appellant asked for an internal review on 10 October. The FCO responded on 4 December 2018, saying that they had looked at the searches, and carried out some repeat and wider searches including subject and correspondence index records within the years 1931 to 1940. They had not identified any material relevant to the Request.

6. The appellant complained to the Commissioner on 5 December 2018. The Commissioner issued her Decision Notice on 17 May 2019. She found that, on the balance of probabilities, the FCO did not hold any information within the scope of the Request. The Commissioner considered the searches performed by the FCO, including the search terms used, and found that they were reasonable and proportionate. Taking into account the fact that three separate searches had been undertaken, including a further search during the Commissioner's investigation, on balance the FCO did not hold any information.

The Appeal

7. The appellant appealed against the Commissioner's decision on 4 June 2019. The grounds are:

- a. Information about the actual searches and results has not been shared with them, which appears to be an attempt to hide information.
- b. Information from the FCO (in an email of 7 November 2018) indicates the request was being looked at by the "Historical Sensitive" department, and it is vital they have access to the information that made them feel this request was sensitive.
- c. They were hoping Freedom of Information would signpost the correct section.
- d. The search terms do not include the items they are trying to locate – rod, white garment and book.
- e. The Commissioner's response is silent on how information they provided about files held by the Zimbabwe National Archives was used.

8. The Commissioner's response maintains that, on the balance of probabilities, no information within the scope of the Request was held by the FCO.

- a. The Commissioner obtained details during her investigation about the questions she put to the FCO, and their replies as to the search terms used, and disputes that anything has been hidden from the appellants.
- b. The heading “sensitive” used by the FCO in its emails is not relevant to the issues under appeal.
- c. It is not within the Commissioner’s remit to suggest where the appellant should direct future requests or how to obtain the information requested.
- d. The terms rod, white garment and book are generic and would produce many irrelevant results, and the FCO used reasonable search terms.
- e. The translated documents provided by the appellant confirm the suggestion that the items were brought to England in 1932 and remain in the country, but this does not confirm that the FCO does or should hold recorded information about them.

Applicable law

9. The relevant provisions of FOIA are as follows.

1 General right of access to information held by public authorities.

- (1) *Any person making a request for information to a public authority is entitled—*
 - (a) *to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
 - (b) *if that is the case, to have that information communicated to him.*

.....

58 Determination of appeals

- (1) *If on an appeal under section 57 the Tribunal considers—*
 - (a) *that the notice against which the appeal is brought is not in accordance with the law, or*
 - (b) *to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
- (2) *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.*

10. In determining whether or not information is held, the standard of proof is the balance of probabilities. It is rarely possible to be certain that information relevant to a FOIA request is not held somewhere in a large public authority’s records. The Tribunal should look at all of the circumstances of the case, including evidence about the public authority’s record-keeping systems and the searches that have been conducted for the information, in order to determine whether on the balance of probabilities further information is held by the public authority.

Discussion and Conclusions

11. In making our decision we have considered all submissions and evidence provided by the parties. We had an agreed bundle of open documents, all of which we have read save for pages 63 to 103 which are not in English and so could not be understood by the panel.

12. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision.

13. The FCO provided an explanation on how it searched for the requested information in its letter to the Commissioner of 10 April 2019. The appellant has now seen this letter as it is part of the open bundle of documents. The FCO says that it searched:

- a. The FCO archive inventory, which provides details of all file series and miscellaneous information held by them.
- b. The National Archive ("TNA") catalogue, to identify files held by TNA which might be relevant to the Request.
- c. The FCO correspondence indexes for 1931 to 1940, which list individual names and subject areas in alphabetical order.

14. This letter explains the search terms used. The original search term used was "Masowe". Broader search terms were used for the internal review. The FCO did not keep a record of these search terms, so they carried out a new search during the Commissioner's investigation. This search used the following keywords for the period 1931 to 1940 in the three search areas listed above: Baba Johane; Shoniwa (Masowe's first name at birth); Masedza (Masowe's second name at birth); Africa:Rhodesia:Southern Rhodesia (as Masowe's biographical details make it clear that he lived in Southern Rhodesia); Southern Rhodesia. The letter also explains that personal computers, networked resources and emails were not searched because the FCO would expect the information to be held in its archive records.

15. Dealing in turn with the grounds of appeal:

- a. ***Information about the actual searches and results has not been shared with the appellant, which appears to be an attempt to hide information.*** As explained above, the FCO's letter to the Commissioner of 10 April 2019 set out quite clearly what searches have been carried out. FOIA gives a right to copies of information that is held in response to a request, not a right to see the results of searches which do not reveal the information requested. We note that the FCO carried out extra searches during the Commissioner's investigation. We find that the FCO has carried out adequate searches and has explained these to the Commissioner, and we do not find that there has been any attempt by the FCO to hide information.
- b. ***Information from the FCO (in an email of 7 November 2018) indicates the request was being looked at by the "Historical Sensitive" department, and it is vital the appellant has access to the information that made them feel this request was sensitive.*** This refers to an email from the Historical FOI Team to the appellant, which said they needed more time to deal with the appellant's review request. It is headed "Historical FOI (Sensitive)". However, we think the appellant may have misunderstood this heading. It does not appear that this email was sent from a specific "sensitive" department. The heading "sensitive" has been added to the general title of the Historical FOI Team. This may well be standard practice when replying to an individual's FOIA request by email. We note that the content of the email does not contain any specific information about the request. In any event, we

do not find that there is any other evidence to indicate that the FCO was dealing with this as a particularly sensitive or otherwise unusual type of request.

- c. ***The appellant was hoping Freedom of Information would signpost the correct section.*** We think the appellant may have misunderstood how the FOIA system works. FOIA allows individuals to frame a request to a public body for information, and the relevant public body will provide information in response if it exists. We can see from the appellant's complaint to the Commissioner that they have made enquiries through a variety of places in the UK to try and find this information, including the Bodleian library where a response is awaited. The Commissioner (and this Tribunal) can deal with complaints about how an individual public body has handled a FOIA request, but cannot provide a general information service to assist in detail with requests of this nature.
- d. ***The search terms do not include the items the appellant is trying to locate – rod, white garment and book.*** We agree with the Commissioner that these are generic terms which would be likely to produce a large number of irrelevant results, and the search terms used by the FCO were reasonable and appropriate in the context of the information requested. The FCO's letter to the Commissioner of 10 April 2019 sets out the specific search terms used, as explained above - including variants on Baba Johane Masowe's name and the location of Southern Rhodesia. We find that these were appropriate search terms to use in order to locate information about items belonging to this specific person that were taken in a particular location.
- e. ***The Commissioner's response is silent on how information they provided about files held by the Zimbabwe National Archives was used.*** We have considered the information (in English) provided to the Commissioner by the appellant. As noted by the Commissioner, these refer to the three items being "confiscated by the Rhodesian government and taken to England (London) where they remain to this day" (from The History of Baba Johane Masowe). The appellant also provided a list of files held by the Zimbabwe National Archives. We have not seen these files, and it is not clear how they would be relevant to showing that the FCO does hold information which has not been disclosed. The appellant has provided some historical evidence that these items are said to have been taken to England, but this does not mean that the FCO holds information about their whereabouts.

16. We accept that the appellant has made a genuine enquiry to the FCO, as well as to a variety of other places in the UK, and may well be disappointed that this has not produced any relevant information. However, for the above reasons, we find that on the balance of probability the FCO does not hold any information within the scope of the appellant's request.

17. We dismiss the appeal and uphold the decision of the Commissioner.

Signed: Hazel Oliver
Judge of the First-tier Tribunal

Date: 9 September 2019
Promulgation date: 12 September 2019