



Appeal number: EA/2016/ 0288

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

ARTHUR TORRINGTON

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Mr MICHAEL JONES
Ms MELANIE HOWARD**

**Heard in public, the Tribunal sitting at Fleetbank House on 20 March 2017.
The Appellant appeared in person.
The Respondent did not attend.**

DECISION

1. The appeal is dismissed.

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REASONS

Background to Appeal

2. The Appellant made a request to Post Office Limited on 17 May 2016, in the following terms:

10 *“I would be grateful if you could send me the lists of Agents and Company who hold contracts; the list should show all their names, postal addresses and email addresses”.*

3. The Appellant’s request was made in the context of his expressed concern that Post Office Limited may have appointed as its Agents/Sub Post Managers in London a disproportionately high number of people of Asian origin. He initially asked for information about the ethnicity of staff employed in agency Post Office branches and, when this was refused, asked for the above details so that he could contact the Agents himself and ask for details of their employment practices and equal opportunities policies.

4. Post Office Limited refused the information request in reliance upon s. 40 (2) of the Freedom of Information Act 2000. It explained its view that the details requested constituted personal data and that disclosing them to the Appellant would breach the first data protection principle.

5. The Respondent issued Decision Notice FS50639662 on 10 November 2016, upholding Post Office Limited’s decision. The Decision Notice concluded that the information requested was personal data because it related to living individuals who were identifiable from it. She noted that many Agents live and work at the same address. She concluded that the data subjects had a reasonable expectation that their details would not be disclosed, that disclosure would have an unjustified adverse effect on them, and that the Appellant’s case for disclosure in the public interest was not sufficiently compelling to outweigh the privacy rights of those concerned.

Appeal to the Tribunal

6. The Appellant’s Notice of Appeal dated 6 December 2016 explained his concern that Post Office Limited was not monitoring the practices of its Agents. He confirmed that he did not request disclosure of personal addresses.
7. The Respondent’s Response dated 18 January 2017 maintained the analysis as set out in the Decision Notice. It explained that it had invited the Appellant to withdraw his appeal but that he had not done so. It commented that the Appellant had not, in his Grounds of Appeal, disputed that the information requested constituted

personal data but had suggested that there was an overriding public interest in disclosure. The Respondent asked the Tribunal to consider that (a) there are less intrusive means of demonstrating any supposed failure of Post Office Limited to operate fairly and (b) that there was no guarantee that the Appellant's plan to write to all agents would provide him with the information he sought. The Respondent was satisfied that disclosure would be likely to cause distress to the individuals concerned and asked the Tribunal to dismiss the appeal.

8. The Appellant requested an oral hearing of his appeal. The Respondent did not attend but asked the Tribunal to rely on her written submissions. The Tribunal considered an agreed open bundle of evidence comprising 108 pages, including submissions made by both parties, for which we were grateful. We were also grateful to the Appellant for his clear oral submissions and helpful summary, handed up at the hearing. The Appellant made clear to the Tribunal his concern about Post Office Limited's agents. He explained that, as a former public servant, he felt strongly that the agents should be subject to the same rules as if the post offices were in public ownership. He found it surprising that each post office was not itself a public authority for the purposes of FOIA. He had obtained details of the ethnicity of post office agents on a UK-wide basis, but was concerned to establish the situation in London as his own impression was that there was a problem there.

20 *The Law*

9. The duty of a public authority to disclose requested information is set out in s.1 (1) of the Freedom of Information Act 2000 ("FOIA"). The exemptions to this duty are referred to in section 2 (2) as follows:

25 *"In respect of any information which is exempt information by virtue of any provision of Part II, section 1 (1) (b) does not apply if or to the extent that –*

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

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10. The exemption upheld in the Decision Notice in this case is s. 40 (2) FOIA. Were it engaged, this provides an absolute exemption falling under s. 2 (2) (a).

11. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

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"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

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(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.

5 *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”*

10 12. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

Conclusion

15 13. We acknowledge that the Appellant has a genuine interest in establishing whether Post Office Limited’s agents are operating fair employment practices. In his oral submissions, he very fairly accepted that this particular request was very broad in scope and included a request for personal data. We note that he has subsequently made more narrowly-worded information requests.

20 14. The Appellant did not attempt to persuade us that there was any error of law in the Decision Notice which is the subject of this appeal. We have not identified any errors of law for ourselves. In the circumstances, this appeal is dismissed.

(Signed)

**ALISON MCKENNA
PRINCIPAL JUDGE**

DATE: 23 March 2017

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