



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice FS50748639  
Date: 6 March 2019**

**Appeal Reference: EA/2019/0078**

**Considered on the papers at Field House, Breams Buildings, London  
On 25 November 2019**

**Before**

**JUDGE CHRIS HUGHES**

**TRIBUNAL MEMBERS**

**MIKE JONES & DAVE SIVERS**

**Between**

**SHANE E. CONNOR**

Appellant

**and**

**INFORMATION COMMISSIONER**

First Respondent

**Preliminary issue**

1. The Appellant in this case (Mr Connor) lives in the Cayman Islands. By an email dated 17 April 2019 he consented to a paper determination of the case. The Respondent (the IC) has indicated that the matter should be determined on the papers. I am satisfied that the requirements of the GRC rule 36 are met.

**DECISION AND REASONS**

1. Mr Connor has been involved for some years in a dispute concerning the ownership of a parcel of land in the Cayman Islands. The Cayman Islands is a

British overseas territory with a Governor appointed by the Queen on the advice of the Government of the UK. The UK remains responsible for defence and foreign relations. The Governor role is more than ceremonial and he has a significant role in civil administration of the Islands.

2. Mr Connor hopes to advance his claim by demonstrating misconduct with respect to the title to the land by a Minister who served for a period in the Government of the Cayman Islands. On 10 December 2017 Mr Connor wrote to the Foreign and Commonwealth Office (the UK government department with responsibility for the Cayman Islands):-

*"I am making this FOI request to the FCO concerning a report that was done by [named individual] which was handed to a representative from the FCO in London when [named individual] was a serving MLA member in the Cayman Islands government, The report was said to be done between the years 1998/2000. The report was to do with the Lisby Johnson estates within the Cayman Islands and that it was misappropriated by a past government Minister namely [named individual]. I look forward to hearing from you in a timely manner. I would also like to request a copy of the reply to [named individual] report and to know what action was taken by the UK and Cayman Islands governments regarding this matter."*

3. The FCO conducted a search of paper and electronic records and notified Mr Connor on 30 January 2018 that it did not hold the information and maintained that position after an internal review. Mr Connor complained to the UK Information Commissioner providing a mass of material relating to the land dispute including maps, pleadings, title documents and correspondence. This material indicated that a report had been provided to the FCO in 1998 and there was also a letter from a UK MP acknowledging that he had received a copy of a report in 2000. Among the documents then provided or provided later are claims that there has been obstruction of attempts to access information held by parts of the Cayman Islands Government. The Information Commissioner sought information from the FCO about the searches it had carried out of electronic and paper records (decision notice 11-13):-

*"...It retrieved ten archive files, covering three years around the dates specified by the complainant. The FCO also consulted the Office of the Governor of the Cayman Islands. These searches were conducted again for the purposes of the internal review, but the requested information was not located.*

*12. The FCO further explained that, following the Commissioner's enquiries, it undertook a further review of the files. It conducted an extended search to cover a broader time period and geographical area. Finally, the FCO contacted the Governor's Office again. However, none of these searches identified the requested information.*

*13. The FCO provided the Commissioner with a copy of its retention schedule and clarified that it was standard practice to dispose of information after ten years unless*

*the information was considered to be of historic interest. The FCO did not hold a record of the destruction of files, but concluded that if the requested information had ever been held, it must have been destroyed in line with this policy."*

4. The Commissioner accepted that the FCO had conducted appropriate searches which would have located the information if it was held. She was unable to identify further action the FCO could take and concluded that while it was reasonably likely that the FCO had held the information in the past, on the balance of probabilities it was no longer held at the time of the request and she issued her decision notice accordingly.

5. In his notice of appeal Mr Connor stated:-

*"This whole land issue has been the biggest cover up in the Cayman Islands with the Governor's Office being involved with Members of the Legislative Assembly who benefitted. The ICO has to disclose the large volume of information to you and with the audio recording of PMM# 7/98 that was debated in the Legislative Assembly. I sent memo's from the British Government too concerning this issue. Why would the Foreign and Commonwealth Office destroy important documents? Land issues never fade. Common sense it's a cover-up as serious wrong doing has been done. I'm seeking justice within the law. Fraud was used to take my family land. "*

6. The Information Commissioner resisted the appeal relying on the decision notice. She suggested that Mr Connor's claims as to a cover-up appeared to relate to actions in the Cayman Islands but that her investigation was robust and independent. She had correctly applied the appropriate test which was whether on the balance of probabilities the information was held. She had been supplied with a copy of the FCO's document retention schedule and considered that the material concerned was "general estates related information" which would only be retained for 10 years. She submitted that the appeal had not on the balance of probabilities shown that the material was held and therefore should be dismissed.

7. Mr Connor submitted further information derived from his researches into the documented history of the land. He has taken various steps with the Government of the Cayman Islands to investigate the history of the registration of the ownership of the land including applications under the Freedom of Information Law of the Cayman Islands for disclosure of records of the Lands and Survey Department. He has been dissatisfied by the response and is currently appealing against that decision to the Office of the Ombudsman of the Cayman Islands. Among the material were extracts from court records relating to the land and allegations of misconduct said to have been committed by a relevant elected member of the Executive - the government controlling the internal affairs of the Cayman Islands. There were also redacted copies of the annual letters from the Governor to the Foreign Secretary of the day (Sir Geoffrey Howe) which appear to have been disclosed to Mr Connor by the Office of the Governor. While these documents are of

some interest they did not materially assist with the legal issue the tribunal must resolve – whether the Information Commissioner’s decision is in accordance with the law.

8. The Information Commissioner notified the FCO of the appeal. In replying the FCO confirmed that it did not intend to join the appeal and gave details of further searches it had performed of archived files with no positive result. Mr Connor submitted recordings of the Legislative Assembly from 1998 where the conduct of the Minister was discussed. Among the information submitted by Mr Connor was a letter from the Office of the Governor to the Ombudsman of the Cayman Islands (bundle pages 106-108). This gave details of the searches which it carried out in response to Mr Connor’s request for information relating to the parcel of land. This confirmed that at the time the FCO policy was that *“this type of correspondence was to be destroyed after 6 or 10 years depending on the exact nature of the correspondence.”*

#### Consideration

9. The tribunal is satisfied from the available evidence that the Information Commissioner’s decision is in accordance with the law and the appeal should be dismissed. While Mr Connor has submitted a great deal of documentary evidence relating to the history of the land and the dispute about its ownership as well as the debate in the Legislative Assembly concerning the issue in 1998, this is only tangentially relevant to the question the tribunal has to decide, which is whether the requested material was held by the FCO when Mr Connor made his request. The material he sought from the FCO in 2018 is a report from 1998-2000. The FCO has provided information about the searches it conducted and has indicated that it is likely that any document would have been destroyed some years ago under its retention policy. The Office of the Governor in a letter from 2018 indicated that the retention policy would mean that after at the most 10 years the document would have been destroyed. While in his Appeal Mr Connor argued that *“land issues never fade”* the preservation of documents of title relating to land is a matter for land registries, he sought information from the FCO which was not a land registry but a department concerned with government policy. Its document retention rules reflected that. The tribunal is satisfied that the decision of the Information Commissioner is correct and there are no grounds to disturb it.
10. The appeal is dismissed.

Signed

Chris Hughes  
Judge of the First-tier Tribunal  
Date: 5 December 2019  
Promulgation date: 20 December 2019