First-Tier Tribunal
General Regulatory Chamber
(Information Rights)

Heard via Cloud Video Platform
26th and 27th January 2021

Appeal references: **EA/2020/0087**
EA/2019/0214
EA/2019/0223
EA/2020/0056
EA/2020/0105

Before

Upper Tribunal Judge O'Connor
Judge Macmillan

Between

Stefania Maurizi (0087)
Home Office (0214)
Benjamin James Lucas (0223)
Taiming Zhang (0056)
Mohamed Mohamood Abdullah (0105)

Appellants

and

Information Commissioner

First Respondent

and

Commissioner of the Metropolitan Police (0087)
Benjamin James Lucas (0214)
Home Office (0223)

Second Respondents

Representation:

Ms Maurizi: Ms E Dehon and Ms J Robinson of Counsel
Home Office: Mr S Kosmin of Counsel
Information Commissioner: Ms H Iyengar of Counsel
Mr Lucas and Mr Abdullah appeared in person
Mr Zhang did not appear, but tendered written submissions
The Commissioner of Metropolitan Police did not appear

DECISION ON PRELIMINARY ISSUE

Introduction

1. These appeals were designated as lead cases pursuant to rule 18 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the 2009 Rules"), and a direction was issued that they were be heard together on the preliminary issue of the Tribunal's jurisdiction to determine the appeals. A number of other 'related cases' were stayed behind these lead cases, pursuant to rule 18(2)(b) of the 2009 Rules.

2. Although the ultimate issue for us is whether the Tribunal has jurisdiction to determine the appeals, the broader question of general importance underpinning such consideration is the territorial scope of the Freedom of Information Act 2000 ("FOIA"). In order to ensure the Tribunal's consideration of this issue was as comprehensive as possible, it invited the parties to address the following questions:

   A. Does FOIA impose a duty on a public authority in the United Kingdom to inform P (a non-UK national person) in writing whether it holds information of the description specified in a request for information made by P pursuant to section 1 of FOIA, in circumstances where P was outside of the United Kingdom at the time the request for information was made?

   B. Does section 50(1) of FOIA give P a right to apply for a decision notice from the Information Commissioner's Office, in circumstances where P was outside of the United Kingdom at the time the request for information was made or, alternatively, at the time the application under section 50(1) FOIA was made?

   C. If, the answer to either, or both, A and B above, is negative but the Information Commissioner's Office makes a decision under Section 50(2) FOIA and serves a decision notice under section 50(4)b FOIA ("the decision"), does P or the public authority have a right to appeal the decision pursuant to section 57 FOIA?

   D. Irrespective to the answer to A-C above, does the First-tier Tribunal have jurisdiction to determine an appeal brought by P pursuant to section 57 FOIA if P was outside of the United Kingdom at the time the Notice of Appeal to the First-tier Tribunal was filed?

   E. Does the answer to any or all of questions A - D above differ if P was outside of the United Kingdom but within the European Union on the relevant date?

F. Does the answer to any or all of questions A - E above differ if P is a UK national?

The lead cases

3. Each of the lead cases has, as a matter of agreed fact, a particular feature which would have enabled the Tribunal to apply the legal principles determined in answer to the six questions identified in the preceding paragraph. As it turns out, for reasons which will become apparent from what we say below, we need not particularise these individual features. All we now need do is observe that the lead cases, and those stayed behind the lead cases, share the following features:

    (i) They are appeals brought to the First-tier Tribunal pursuant to section 57 of FOIA.

    (ii) Each appeal involves a party who does not reside in the United Kingdom.

    (iii) In each of the appeals, the party who does not reside in the United Kingdom made a request for information under FOIA to a public authority in the United Kingdom, and that party subsequently complained to the Information Commissioner ("the ICO") that the public authority did not respond to such request in accordance with of Part I of FOIA; and,

    (iv) The ICO responded to each such complaint by issuing a Decision Notice under section 50 of FOIA.

The position of the parties

4. Somewhat unusually, there was complete consensus between the parties on the legal issues to be determined by the Tribunal. Each of the parties contended that no territorial limitation should be read into FOIA and that, consequently, the Tribunal has jurisdiction to determine each of the substantive appeals.

5. Although the parties were in agreement on the issue of the Tribunal's jurisdiction, and the legal principles underpinning the consideration of such, the Tribunal is a creature of statue and it cannot found a jurisdiction that it otherwise does not have simply because the parties agree to that position. In other words, despite the parties' agreement that the Tribunal has jurisdiction to determine the substantive appeals, the Tribunal must nevertheless be satisfied for itself that this is so.

6. At this juncture, it is appropriate to thank all of the parties for the clear and comprehensive written and oral submissions that have been put forward. In particular, we would like to thank the legal representatives for Ms Maurizi, the Home Office and the ICO for their exploration before the Tribunal of arguments

which, at least potentially, weighed against their primary contentions. We found this exercise invaluable in our considerations.

The legislative background

7. FOIA provides for a general right of access to information held by public authorities. That right is subject to exceptions and exemptions. It makes provision for its enforcement by the ICO and for a right of appeal from a decision of the ICO to the General Regulatory Chamber of the First-tier Tribunal. Schedule 1 to the Act lists the public authorities to which the Act applies. Each of these public authorities is based in the United Kingdom.

8. Section 1(1) of FOIA reads:

> "(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."

9. Section 8 of FOIA sets out what a person must do to make a request, and relevantly reads:

> "8.— Request for information.
>
> (1) In this Act any reference to a "request for information" is a reference to such a request which—
>
> (a) is in writing,
>
> (b) states the name of the applicant and an address for correspondence, and
>
> (c) describes the information requested.
>
> (2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request—
>
> (a) is transmitted by electronic means,
>
> (b) is received in legible form, and
>
> (c) is capable of being used for subsequent reference."

10. By section 50 of FOIA:

> "50. - Application for decision by Commissioner
>
> (1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.
>
> (2) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him—

(a) that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45,

(b) that there has been undue delay in making the application,

(c) that the application is frivolous or vexatious, or

(d) that the application has been withdrawn or abandoned."

(3) Where the Commissioner has received an application under this section, he shall either—

(a) notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so, or

(b) serve notice of his decision (in this Act referred to as a "decision notice") on the complainant and the public authority.

11. Section 57 of FOIA materially states:

"57. – Appeal against notices served under Part IV

(1) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice."

Discussion

12. There is no better place to start than at the beginning. The Tribunal's decision to give consideration to the territorial scope of FOIA was first raised by the Tribunal Registrar when considering the issue of jurisdiction in a number of appeals which fall within the category of cases affected by this decision. In those appeals the Tribunal Registrar observed, and raised with the parties, the following passage found in a well-known publication in the area of information rights, "*Information Rights: A Practitioner's Guide to Data Protection, Freedom of Information & Other Information Rights*", authored by Philip Coppel QC :

> "It is a principle of statutory interpretation that Parliament does not assert or assume jurisdiction that goes beyond the limits established by the common consent of nations. Provided that its language admits, an Act of Parliament is to be applied so as not to be inconsistent with the comity of nations or with the established principles of public international law. The principle of comity between nations requires that each sovereign state should be left to govern its own territory. Thus, while words in a statute maybe expressed in universally applicable language, the rebuttable presumption is that Parliament is concerned with the conduct of persons taking place within the territories to which the Act extends, and with no other conduct. In relation to rights conferred and obligations imposed by statute, the presumption operates to limit these rights and obligations to those persons within the country at the time at which the right is sought to be exercised. There is little within FOIA *(sic)* suggest that the presumption against extra-territoriality was intended to be rebutted. While the extra- territorial application of the Act would not encroach upon the sovereignty of another state, it would confer rights on people all over the world who have little or no connection with the United Kingdom. Although FOIA will certainly

> extend to confer rights on a person in Scotland, it is doubtful whether FOI(S)A extends to confer rights on a person in England, Wales or Northern Ireland, as the territorial limits of the Acts of the Scottish Parliament are the boundaries of Scotland. Nevertheless, the presumption against extra-territoriality is unlikely to make much practical difference, as a foreign applicant can always engage an undisclosed local agent to make the request. Equally, in the case of a natural person, there is nothing to stop such a person coming into the jurisdiction for the purpose of making a request. It follows that a non-resident present in the United Kingdom, however fleetingly, is entitled to make a request under FOIA."

13. There can be no dispute that the question of whether a statutory provision applies to persons or matters outside the jurisdiction depends on its proper construction. The question for consideration by us is whether Parliament intended there to be an absence of territorial limitation on the provision of rights by section 1(1) and/or section 50(1) of FOIA. The answer will depend on the wording, purpose and context of the legislation considered in the light of relevant principles of interpretation and principles of international law and comity.

14. It is contended by the parties that both section 1(1) and section 50(1) of FOIA have extra territorial effect to the extent that each imbues *"any person"* with the rights identified therein, irrespective of where such person may be in the world and irrespective of what connections such person has to the United Kingdom.

15. Whilst we agree that such a contention is supported by a literal reading of these two provisions, and note the absence of express provision in the Act providing for territorial limitation, this is only an entrée into the issue of construction before us, because it is equally uncontentious that there is no express provision in the Act providing for extra-territorial effect.

16. For reasons which are obvious, at front and centre stage of the parties' submissions has been the application of the presumption which, it is said in Coppel, operates so as to limit the rights conferred and obligations imposed by a statute "*to those persons within the country at the time at which the right is sought to exercised.*" - more commonly framed as the presumption in domestic law that legislation is generally not intended to have extra-territorial effect.

17. It is useful at this stage to delve deeper into the origins and reach of this presumption. In Masri v Consolidated Contractors Int (UK) Ltd (No. 4) [2010] 1 AC 90, Lord Mance JSC said of the presumption, (at [10]), that the "*…principle relied upon is one of construction, underpinned by considerations of international comity and law.*"

18. A particularly clear statement of the principle is to be found in the speech of Lord Bingham of Cornhill in R (Al-Skeini) v Secretary of State for Defence [2008] 1 AC 153 at [11], concerning the scope of application of the Human Rights Act 1998:

"In resisting the interpretation, upheld by the courts below, that the HRA has extra-territorial application, the Secretary of State places heavy reliance on what he describes as 'a general and well established principle of statutory construction'. This is (see *Bennion, Statutory Interpretation*, 4th ed (2002), p 282, section 106) that 'Unless the contrary intention appears, Parliament is taken to intend an Act to extend to each territory of the United Kingdom but not to any territory outside the United Kingdom'. In section 128 of the same work, p 306, the author adds: 'Unless the contrary intention appears … an enactment applies to all persons and matters within the territory to which it extends, but not to any other persons and matters.' In *Tomalin v S Pearson & Son Ltd* [1909] 2 KB 61, Cozens-Hardy MR, with the concurrence of Fletcher Moulton and Farwell LJJ, endorsed a statement to similar effect in Maxwell on the Interpretation of Statutes 4th ed (1905), pp 212-213:

> 'In the absence of an intention clearly expressed or to be inferred either from its language, or from the object or subject matter or history of the enactment, the presumption is that Parliament does not design its statutes to operate [on its subjects] beyond the territorial limits of the United Kingdom.'

Earlier authority for that proposition was to be found in cases such as *Ex p Blain; In re Sawers* (1879) 12 Ch D 522, 526, per James LJ, and *R v Jameson* [1896] 2 QB 425, 430, per Lord Russell of Killowen CJ. Later authority is plentiful: see, for example, *Attorney General for Alberta v Huggard Assets Ltd* [1953] 1 AC 420, 441, per Lord Asquith of Bishopstone for the Privy Council; *Clark v Oceanic Contractors Inc* [1983] 2 AC 130, 145, per Lord Scarman; *Al Sabah v Grupo Torras SA* [2005] 2 AC 333, para 13, per Lord Walker of Gestingthorpe for the Privy Council; *Lawson v Serco Ltd* [2006] ICR 250, para 6, per Lord Hoffmann; *Agassi v Robinson* [2006] 1 WLR 1380, paras 16, 20, per Lord Scott of Foscote and Lord Walker of Gestingthorpe. That there is such a presumption is not, I think, in doubt. It appears (per Lord Walker in *Al Sabah*, above) to have become stronger over the years." (at para 11)"

19. Similarly, Lord Rodger observed in Al-Skeini at [45]:

> "Behind the various rules of construction, a number of different policies can be seen at work. For example, every statute is interpreted, 'so far as its language permits, so as not to be inconsistent with the comity of nations or the established rules of international law': *Maxwell on the Interpretation of Statutes*, 12th ed (1969), p 183. It would usually be both objectionable in terms of international comity and futile in practice for Parliament to assert its authority over the subjects of another sovereign who are not within the United Kingdom. So, in the absence of any indication to the contrary, a court will interpret legislation as not being intended to affect such people. They do not fall within 'the legislative grasp, or intendment,' of Parliament's legislation, to use Lord Wilberforce's expression in *Clark v Oceanic Contractors Inc* [1983] 2 AC 130, 152C-D."

20. In a recent decision of the Supreme Court, R (on the application of KBR, Inc) (Appellant) *v* Director of the Serious Fraud Office (Respondent) [2021] UKSC 2, handed down after the hearing in the instant matter, Lord Lloyd-Jones said, as follows, of the presumption:

"23. However, international law also recognises a legitimate interest of States in legislating in respect of the conduct of their nationals abroad. Nationals travelling or residing abroad remain within the personal authority of their State of nationality and, consequently, it may legislate with regard to their conduct when abroad subject to limits imposed by the sovereignty of the foreign State (*Oppenheim's International Law*, vol 1: Peace, 9th ed (1992), Part I, para 138). As a result, in such circumstances the strength of the presumption against extra-territorial application of legislation will be considerably diminished and it may not apply at all. (See *Masri v Consolidated Contractors International (UK) Ltd (No 4)* [2009] UKHL 43; [2010] 1 AC 90, para 10 per Lord Mance.) The matter was stated by Lord Rodger in *Al-Skeini* in the following terms (at para 46):

> "Subjects of the Crown, British citizens, are in a different boat. International law does not prevent a state from exercising jurisdiction over its nationals travelling or residing abroad, since they remain under its personal authority: *Oppenheim's International Law*, 9th ed (1992), vol 1, Pt I, para 138. So there can be no objection in principle to Parliament legislating for British citizens outside the United Kingdom, provided that the particular legislation does not offend against the sovereignty of other states."

24. The presumption reflects, in part, the requirements of international law that one State should not by the claim or exercise of jurisdiction infringe the sovereignty of another State in breach of rules of international law. Thus, for example, legislation requiring conduct in a foreign State which would be in breach of the laws of that State or otherwise inconsistent with the sovereign right of that State to regulate activities within its territory may well be a breach of international law. There is clearly a compelling rationale for the presumption in such cases. However, the rationale and resulting scope of the presumption are wider than this. They are also rooted in the concept of comity. The term "comity" is used here to describe something less than a rule of international law. Judge Crawford explains that certain usages are carried on out of courtesy or comity and are not articulated or claimed as legal requirements. "International comity is a species of accommodation: it involves neighbourliness, mutual respect, and the friendly waiver of technicalities." (Crawford, *Brownlie's Principles of Public International Law*, 9th ed (2019), p 21. See also F A Mann, *Foreign Affairs in English Courts*, (1986), p 134.) In the particular context of claims to extra-territorial jurisdiction Crawford observes (at p 468):

> "Comity arises from the horizontal arrangement of state jurisdictions in private international law and the field's lack of a hierarchical system of norms. It plays the role of a somewhat uncertain umpire: as a concept, it is far from a binding norm, but it is more than mere courtesy exercised between state courts. The Supreme Court of Canada said in *Morguard v De Savoye* [1990] 3 SCR 1077, 1096 citing the US Supreme Court in *Hilton v Guyot* 159 US 113, 164 (1895) that:
>
> > 'Comity is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its law.'"

> 25. The lack of precisely defined rules in international law as to the limits of legislative jurisdiction makes resort to the principle of comity as a basis of the presumption applied by courts in this jurisdiction all the more important. As a result, the presumption in domestic law is more extensive and reflects the usages of States acting out of mutual respect and, no doubt, the expectation of reciprocal advantage. Accordingly, it is not necessary, in invoking the presumption, to demonstrate that the extra-territorial application of the legislation in issue would infringe the sovereignty of another State in violation of international law."

21. Save in relation to the adoption of the enforcement and appeal provisions in sections 50 and 57 of FOIA by the Environmental Information Regulations 2004 ('EIR') and the INSPIRE Regulations 2009, none of the parties contend that the right created by section 1(1) has any connection to a right or obligation subsisting in international law. Ms Iyengar, on behalf of the Information Commissioner, described FOIA as creating a new jurisdiction, and as being subject to its own rules. Certainly, insofar as Article 10 ECHR is concerned, the parties' position accords with the decision of the Upper Tribunal in Moss v Information Commissioner and the Cabinet Office: [2020] UKUT 24, following Kennedy v Charity Commission (Secretary of State for Justice and others intervening) [2014] UKSC 20; [2015] A.C. 455.

22. Having reflected on the rationale for the presumption, it is difficult to see how it could operate in the instant circumstances with sufficient strength so as to displace the ordinary and literal construction of the term "*any person*" in sections 1(1) and 50(1) of FOIA, and in our view it is readily rebutted.

23. The purpose of FOIA is stated at its outset to be, "*to make provision for the disclosure of information held by public authorities…*". As already alluded to, schedule 1 to the Act lists the public authorities to which the Act applies and each is based in the United Kingdom as, of course, is the Information Commissioner who is given regulatory responsibility. In short, the obligations imposed by FOIA fall only on those within the United Kingdom. Plainly, the imposition of obligations on those within the United Kingdom is not capable of offending the presumption against extra-territorial application.

24. Sections 1(1) and 50(1) of FOIA provide for rights and impose no extraterritorial obligations. In our view, it cannot sensibly be advanced that the provision of a right that may only be exercised within the United Kingdom, to a person who is not in the United Kingdom and who has no obvious connection to the United Kingdom is, of itself, inconsistent with the comity of nations or the established rules of international law. By enacting sections 1(1) and 50(1) of FOIA, Parliament was not seeking to assert its authority over those on the territory of another sovereign State, and the provisions do nothing to damage the mutual respect between nations or "*neighbourliness*". In such circumstances we agree with the parties that, insofar as the presumption is operative, it is weak and easily rebutted.

25. As already alluded to, we note that in this instance the presumption, however weak, is not rebutted by express provision. However, an intention on the part

of Parliament to give extra-territorial effect to a statutory provision may also be implied from the scheme, context and subject matter of the legislation (Bilta (UK) Ltd v Nazir (No 2) [2016] AC 1, at [212 - 213].

26. Returning to the purpose of FOIA i.e. "*to make provision for the disclosure of information held by public authorities…*", this is plainly furthered in the Act by the mechanism by which such a request for information can be made. Consistent with the purpose of FOIA, the scheme is uncomplicated. It requires a request to be made of the public authority in writing, provision of a description of the information being requested and a statement of the applicant's name and an address for correspondence. The request can be transmitted by electronic means.

27. It is difficult to envisage a more straightforward scheme for making a request for the publication of information. It is clearly designed to be as inclusive and easy to use as possible. For our purposes, a notable feature of section 8, and one which tends to support the contention that extra-territorial application can be implied into section 1(1), is the absence of any requirement therein, or elsewhere, to state the nationality or place of residence of the requestor. In particular, we observe that the requirement to provide an address for correspondence is not the akin to requiring details of a requestor's place of residence. Indeed, an address for correspondence can be electronic – such as an email address.

28. The implication that Parliament intended to give extra-territorial effect to section 1(1) of the Act is, in our view, further supported by considering the lens through which the purpose of the Act is to be viewed. As Lord Mance JSC describes it in Sugar v BBC (No (2)) [2012] 1 WLR 439, at [110], FOIA "*reflects the value to be attached to transparency and openness in the workings of public authorities in modern society, and its provisions should be construed "in as liberal a manner as possible*". Lord Mance later observes in Kennedy v Charity Commission [2015] AC 455, again in the context of a consideration of FOIA, that "*Information is the key to sound decision-making, to accountability and development; it underpins democracy and assists in combatting poverty, oppression, corruption, prejudice and inefficiency. Administrators, judges, arbitrators, and persons conducting inquiries and investigations depend on it; likewise the press, NGOs and individuals concerned to report on issues of public interest.*" (at [1]). In the same case, Lord Sumption JSC said of FOIA (at [153]) that it was "*a landmark enactment of great constitutional significance for the United Kingdom.*"

29. Viewed in this context, the purpose of FOIA is obviously impinged upon if the pool of persons who can make requests for the disclose of information from public authorities is restricted. The flip side of this is, of course, that the purpose of FOIA is furthered if the pool of persons who can make a request for the disclosure of information from UK-based public authorities is as wide as possible. Again, this supports the contention that an extra-territorial application of section 1(1) of Act can be implied.

30. There are other good reasons not to imply a territorial limitation into section 1(1). First, we see force in Mr Kosmin's submission that to do so would bring inconsistency with associated legal regimes, in particular the EIR, which implement Council Directive 2003/4/EC on public access to environmental information, which in turn gives effect to the Aarhus Convention (i.e. The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters – to which the United Kingdom remains a party).

31. In summary, and we intend no injustice to Mr Kosmin's comprehensive submissions on this point, it is submitted that although the EIR does not have express provision relating to its territorial reach, the applicable construction tools to be deployed where its terms are reasonably capable of bearing more than one meaning include the premise that, if one of the meanings which can reasonably be ascribed to the legislation is consonant with the United Kingdom's international obligations and the others are not, the meaning which is consonant is to be preferred. Attention is subsequently drawn to Article 3(9) of the Aarhus Convention which provides that: "*the public shall have access to information…without discrimination as to citizenship, nationality or domicile, and in the case of a legal person, without discrimination as to where it has its registered seat or its effective centre of its activities*". The point is thereafter made that, should there be a dispute as to the territorial reach of the EIR of the type which we are now considering in relation to FOIA, the outcome, consistently with Article 3(9) of the Aarhus Convention, would be that the EIR did not have any territorial limitation.

32. We also acknowledge the force of Ms Dehon's submission, that to imply territorial limitation into section 1(1) of FOIA would lead to capricious results. The passage from Coppel, cited at [12] above, highlights a number of these. We do not propose to rehearse them again at this stage.

33. Drawing all of this together, we accept that there is no express statement in FOIA providing for extra-territorial application of any provision therein. However, for reasons we have given above, in the case of the right created by section 1(1) we find that the presumption against extra-territorial application is weak and that it has been rebutted.

34. We conclude that Parliament did not intend to impose a territorial limitation on section 1(1) of FOIA. This is supported both by the purpose of the Act and a literal and natural reading of section 1(1). This conclusion also has the substantial benefit of ensuring consistency with associated legal regimes and of preventing the sort of capricious results espoused in Coppel. We find, therefore, that a person making a request for information under section 1(1) of FOIA of a public authority in the United Kingdom, is not required to be in the United Kingdom when doing so nor, indeed, is that person required to have any connection to the United Kingdom.

35. We turn next to section 50(1) of FOIA, which provides the route by which *"any person"* may apply to the regulator – the Commissioner – for a decision whether a request for information made to a public authority has been dealt with in accordance with Part I of the Act.

36. Again, there is no express provision in section 50(1) providing for its extra-territorial operation but, once again, we conclude that Parliament did not intend to impose a territorial limitation in this context. We reach this conclusion ostensibly for the same reasons as those identified in the rationale above in relation to section 1(1). We add, however, that there is no obvious justification for permitting a request for information from a United Kingdom public authority to be made by *"any person"* anywhere in the world, even absent such person having a connection to the United Kingdom, and then imposing a territorial limitation on the use of the complaint mechanism in relation to the response received. To do so, in our view, impinges on the purpose of the legislation in equal measure to that which would follow a restrictive reading of section 1(1). We therefore conclude that Parliament did not intend to impose a territorial limitation on section 50(1) of FOIA. It follows, as a matter of common sense, that neither should such restriction be read into the right of appeal set out in section 57.

Decision

37. We conclude by answering the questions posed of the parties by the Tribunal:

    A. FOIA does impose a duty on a public authority in the United Kingdom to inform P (a non-UK national person) in writing whether it holds information of the description specified in a request for information made by P pursuant to section 1 of FOIA, in circumstances where P was outside of the United Kingdom at the time the request for information was made.
    B. Section 50(1) of FOIA does give P a right to apply for a decision notice from the Information Commissioner's Office, in circumstances where P was outside of the United Kingdom at the time the request for information was made or, alternatively, at the time the application under section 50(1) FOIA was made.
    C. Not applicable, the answer to both A and B being in the affirmative.
    D. The First-tier Tribunal does have jurisdiction to determine an appeal brought by P pursuant to section 57 FOIA, if P was outside of the United Kingdom at the time the Notice of Appeal to the First-tier Tribunal was filed.
    E. The answers to questions A - D above would not differ if P was outside of the United Kingdom but within the European Union on the relevant date.

Additional observation

38. It was submitted by the Information Commissioner that, were the Tribunal to conclude that it had no jurisdiction in the context of some or all of the

circumstances represented by the questions set out above, the Tribunal would, of necessity, have to strike out any appeal against the purported decision notice on the basis that it would be a nullity.

39. Given our conclusion on jurisdiction, this is not a matter we currently need to address. However we comment, in passing, that were the Tribunal to conclude in a case that the Commissioner has issued a section 50(3)(b) decision notice in circumstances where she had no jurisdiction to do so, the Tribunal would be bound by the decision of the Upper Tribunal in Information Commissioner v Bell [2014] UKUT 0106 (AAC), which was confirmed by a three judge panel in Information Commissioner v Malnick & ACOBA [2018] UKUT 72 (AAC) at paragraph 98.

Upper Tribunal Judge O'Connor
M O'Connor

Tribunal Judge Macmillan
M Macmillan

Date 19th February 2021

Promulgated date 24th February 2021