



ON APPEAL FROM

THE INFORMATION COMMISSIONER'S DECISION NOTICE  
No:FS50587663

Dated: 5th, August 2015

Appeal No. EA/2015/0198

Appellant: Christian Eriksson (« CE »)

Respondent: The Information Commissioner (“the ICO”)

Before : Judge David Farrer Q.C.

Henry Fitzhugh and Melanie Howard

Date of Hearing: 19<sup>th</sup> January 2016

Date of Decision: 24<sup>th</sup>. January., 2016

Promulgated: 4<sup>th</sup> March 2016

Subject matter : Are the Church Commissioners a “public authority” by virtue of FOIA.s.6 ?

## The Tribunal's decision

They are not. The appeal is dismissed.

David Farrer Q.C.

Tribunal Judge

24<sup>th</sup>. January, 2016

### Our Decision

#### The Request

1. On 1<sup>st</sup>. May, 2015 the Appellant requested from the Church Commissioners  
*“The address and postcodes of all land and property owned by the Church Commissioners, whether freehold, leasehold, unregistered or any other form of tenure”*.
2. The Church Commissioners (“the Commissioners”) provided some information to the Appellant as to its property holdings but did not respond in the terms of his request. He complained to the ICO. The ICO’s Decision Notice ruled that the Commissioners were not a public authority. CE appealed.
3. The short issue was and is: are the Commissioners a “public authority” within FOIA s.3 ?
4. The question can be further refined because the Appellant rightly acknowledges that they are not listed in Schedule 1 to FOIA as a public authority nor added to Schedule 1 by way of amendment in accordance with s.4 nor designated as a public authority by the Secretary of State pursuant to s.5.

5. His case is that they are “a publicly – owned company” within s.3(1)(b) as defined in s.6 and therefore a public authority for the purposes of FOIA.

### Public authorities

6. Sections 3 – 6 of FOIA deal with the different ways in which a body may have, acquire or lose the status of a public authority owing the duties enacted in s.1.
7. The first two categories, provided for in s. 3(1)(a) require no more than a summary description, since, as noted above, CE does not contend the Commissioners fall within either of them.
8. Section 3(1), so far as material here, provides that a public authority is a body or office – holder listed in Schedule 1 to FOIA or designated by an order made by the Secretary of State under s.5 (s.3(1)(a)(i) and (ii)) or a publicly owned body as defined by s.6 (s.3(1)(b)). Section 4 empowers the Secretary of State to add a body or office – holder fulfilling prescribed conditions to Schedule 1.
9. So far as material, s.6(1) provides that a company is a publicly - owned company for the purposes of s.3(1)(b) if

*“(a) it is wholly owned by the Crown”*

10. Section 6(2)(a) states that, for the purposes of this section –

*“a company is wholly owned by the Crown if it has no members except*

- (i) Ministers of the Crown, government departments or companies wholly owned by the Crown, or*
- (ii) Persons acting on behalf of Ministers of the Crown, government departments or companies wholly owned by the Crown.”*

11. “Company” includes any body corporate (s.6(3)).
12. The Commissioners were established by the Church Commissioners Measure, 1947 No. 2, 10 and 11 Geo 6 as a body corporate having perpetual succession and a common seal (Article 1(1)). They are, therefore, a “company” as defined in s.6(3). Article 1(2) provides that that body should be constituted in accordance with the provisions of the First Schedule to the Measure. Those provisions determine whether the Commissioners are wholly owned by the Crown for the purposes of s.6(2)(a) of FOIA. Whilst “members” is generally a term referring to the shareholders of a company, it is plain that the Commissioners, as individuals, are the members of this body corporate. There is no other candidate.
13. The First Schedule provides that Commissioners are either (a) holders of specified offices, namely five government ministers and the Speaker of the House of Commons or (b) “other persons”.
14. The other persons consist of the Archbishops of Canterbury and York, the Church Estate Commissioners, bishops, deans or provosts, three other clerks in holy orders and four lay persons, all to be elected by those within the Church whom they represent, together with nine persons to be nominated either by the Queen or the Archbishops.
15. Neither the Speaker nor any of the elected or nominated Commissioners within category (b) fall within the classes specified in s.6(2)(a)(i) or (ii) of FOIA.
16. Notwithstanding the interesting arguments advanced in the Appellant’s grounds of appeal, his contention that the Commissioners are a public authority amenable to s.1 must therefore fail, as he realistically accepted at the hearing.

17. This appeal is therefore dismissed.

18. Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

24<sup>th</sup>. January, 2016