

**THE EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM. ANUHCV 2023/0427**

**BETWEEN:**

**ALISTER THOMAS**

**Claimant**

**and**

**IAN HUGHES as SUPERVISOR OF ELECTIONS**

**ANTIGUA AND BARBUDA ELECTORAL COMMISSION**

**EUGENE FRANCIS, DEPUTY CHAIRMAN**

**JULIET BENJAMIN, COMMISSIONER**

**ANTHONYSON KING, COMMISSIONER**

**ALRICK DANIEL, COMMISSIONER**

**VERNEST MACK, COMMISSIONER**

**Defendants**

**THE ATTORNEY GENERAL**

**Interested Party**

**APPEARANCES**

Mr. Chaku Symister of counsel for the Claimant

Mrs. Emily Simon Forde of counsel for the Defendants

Mrs. Carla Brooks Harris for the Interested Party

---

2024: October 7<sup>th</sup>

November 11<sup>th</sup>

---

**DECISION**

- [1] **DRYSDALE, J.:** On 24<sup>th</sup> November 2023 the Claimant initiated these proceedings seeking a declaration that he is entitled to receive a copy of the register for elections with photographs used in the St. John's City West Constituency during the general elections held on 18<sup>th</sup> January 2023.

## **THE EVIDENCE**

### **The Claimant**

- [2] The Claimant, a candidate for the United Progressive Party to contest the general elections on 18<sup>th</sup> January 2023, stated in his affidavit that the Register for Elections was widely published on 13<sup>th</sup> January 2023. However, the electoral list with photographs (hereinafter "the picture list") was distributed on election day to the Returning Officer and Presiding Officers in the constituency. He noted that the list which was used for identification purposes was not widely circulated.
- [3] After the election process concluded, the Claimant stated that the picture list was returned to the offices of the Electoral Commission, which are shared with the Supervisor of Elections.
- [4] As a candidate, he has a direct interest in ensuring that the two lists—the register of electors and the picture list—are identical. However, the current system does not allow for easy comparison or verification of these lists particularly as the polling agents who have sight of the picture list are prohibited from taking pictures or making notes which in any event would be impracticable to do so.
- [5] The Claimant suggests that it is in the public interest to ensure that both lists are identical. Accordingly, after the conclusion of the elections on 3<sup>rd</sup> February 2023, he wrote to the Supervisor of Elections and the Chairman of the Electoral Commission requesting a copy of the picture list. That request was denied by the Supervisor of Elections, but no response has been received from the Chairman of the Electoral Commission.
- [6] On 7<sup>th</sup> September 2023 he wrote to the First Defendant, who was the newly appointed Supervisor of Elections about obtaining a copy of the picture list under the Freedom of Information Act<sup>1</sup> (hereinafter FOIA). That request was once again refused. This denial is violative of his right to receive the information requested pursuant to the FOIA.
- [7] Accordingly, the Claimant sought the following reliefs:
- 'i. A declaration that the Claimant is entitled to receive a copy of the register for elections with photographs ("the picture list") used in the election held in the St. John's City West Constituency in the general elections of 18<sup>th</sup> January 2023

---

<sup>1</sup> No 19 of 2004

ii. An order directing the Supervisor of Elections to forthwith provide the Claimant with a copy of the register for elections with photographs (“the picture list”) used in the 18<sup>th</sup> January 2023 elections held in the St. John’s City West Constituency.’

## **THE DEFENDANTS**

- [8] The Defendants filed an affidavit on 15<sup>th</sup> January 2024<sup>22</sup> in which they agree that there is an obligation to publish a register for elections within 14 days after the issue of the writ of elections. That for the purpose of verification of identity it is also required that a picture list be produced on the day of elections. They deny, however, that it is an obligation for the picture list to be widely distributed. They contend that the picture list is solely for use in the polling station by the Presiding Officer and political party agents.
- [9] The Defendants explained that each constituency is divided into polling stations. As it concerns the Claimant’s constituency, there were 10 polling divisions. That the Returning Officer has overall responsibility for the voting process but that there were Presiding Officers in each polling station under the supervision of the Returning Officer.
- [10] The Defendants state that after the close of the poll all documents are secured and sealed and returned to the Presiding Officer in the presence of all agents. The documents are then given to the Returning Officer in the constituency and then ultimately to the Supervisor of Elections. These documents contain personal and or sensitive information such as markings as to how certain assisted electors voted. They explained that these voters would be blind or otherwise incapacitated voters who requested assistance from the Presiding Officer to mark the ballot on their behalf due to their incapacity.
- [11] That these documents once sealed are only accessible via an order of the Court.

## **The Interested Party**

- [12] The Attorney General was on 6<sup>th</sup> February 2024 joined as an interested party to these proceedings and subsequently filed an affidavit in response to the claim.
- [13] The Interested Party states that the claim is unfounded, as matters related to elections and the entitlement to the picture list are governed by Section 70 of the Representation of People Act.

---

<sup>22</sup> The Defendants subsequently filed a further affidavit on 5<sup>th</sup> February 2024 without leave of the court which was withdrawn and therefore is not considered as part of these proceedings.

The Attorney General therefore argues that the Claimant should not be allowed to circumvent the established process and obtain the picture list through this legal action.

### **Claimant's Affidavit in Reply**

- [14] The Claimant responded by stating that without access to the picture list, neither he nor the public can conduct a comparison between it and the electoral list. He further emphasized that taking notes or photographs of the list would be necessary for a meaningful comparison.
- [15] The Claimant states that he is not challenging the manner in which documents have been sealed and that he is not seeking information on how persons voted. He reiterates that he is seeking the picture list pursuant to section 15 of the FIOA.

### **THE SUBMISSIONS**

- [16] The Claimant asserts that the Freedom of Information Act<sup>3</sup> grants him the right to access the requested information. He posits that the FOIA is a cornerstone of a legislative framework designed to foster good governance, accountability, and transparency within government departments. Consequently, the refusal to provide the information is contravening the spirit and intent of the legislation.
- [17] The Claimant acknowledges that while the FOIA grants a right to access information, it also includes certain exemptions for records that are not subject to disclosure. He cites Section 7 of the FOIA in support of this argument. The Claimant maintains that the records requested do not fall within the scope of any of the enumerated exceptions or exclusions. The Claimant further argues that Section 6(2) and (3) of the FOIA stipulate that the FOIA takes precedence over any other law that restricts the disclosure of a record by a public authority, to the extent that such law is inconsistent with the FOIA. Therefore, the Claimant submits that if parliament intended to restrict the picture list from a freedom of information request, it could have explicitly done so. This is particularly evident since the amendment to the Representation of People Act<sup>4</sup> (which introduced the provision for the picture list) was enacted seven years after the FOIA came into effect.
- [18] Finally, the Claimant submits that public policy concerns should be carefully considered when determining whether the FOIA requires him to have access to the information. He argues that the FOIA aims to promote transparency, a fundamental principle for an informed citizenry.

---

<sup>3</sup> No 6 of 2004

<sup>4</sup> Representation of the People Act Cap 379; amended as per No 12 of 2011

Furthermore, he contends that it is sound public policy for the legislature to open government to the people through legislation. The Claimant believes that citizens having access to information in government's hands is beneficial, as it encourages greater public interest in government, deters corrupt practices, and promotes democratic ideals.

### **The Defendants Submissions**

- [19] The Defendants challenge the court's jurisdiction to hear this matter. They argue that the term "election" has a broader definition, encompassing various stages and steps, as supported by the case of **Trevor Walker v James**<sup>5</sup>. The Defendant contends that the issues raised by the Claimant should have been addressed through an election petition within the stipulated 7-14 day timeframe outlined in the Representation of People Act.
- [20] The Defendants contend that the Claimant's challenge to the accuracy of the register of electors and the picture list strikes at the very heart of the electoral process. Therefore, this matter falls squarely within the purview of an election court, which is the designated forum for adjudicating such disputes. They argue that any attempt to resolve this issue in a different court would be an inappropriate exercise of jurisdiction and would likely lead to an invalid decision.
- [21] The Defendants cite Sections 68-70 of the Representation of the People Act, highlighting that the register contains sensitive personal information about assisted electors. They argue that the confidentiality of the voting process must be upheld, and the manner in which an elector votes should only be disclosed if the vote is deemed invalid by a court of law.
- [22] The Defendants argue that the Claimant's reliance on the FOIA is misplaced. They contend that Section 15 of the FOIA should not be interpreted in isolation and that the Act includes exceptions for certain types of information. The Defendants cite Section 26(1) of the FOIA, highlighting that the registers contain personal information, such as markings indicating how assisted electors voted. They argue that these individuals have not consented to the disclosure of their personal information and that any disclosure must be balanced against potential harm.
- [23] They emphasize the importance of the secret ballot principle, asserting that voting is a private matter. Disclosing information that could identify individuals, and their voting choices could have significant repercussions, particularly in a small society like Antigua, potentially affecting their livelihoods and mental well-being. This could deter individuals from seeking assistance with voting, disenfranchising a segment of the electorate. The Defendants contend that such disclosure is unreasonable and unnecessary.

---

<sup>5</sup> ANUHCv2018/0096

- [24] Additionally, the Defendants argue that Section 15 of the FOIA cannot override Section 44 of the Constitution, which governs matters related to elections. They assert that any matter touching upon the broader concept of elections, not limited to election challenges, falls under the purview of Section 44 of the Constitution.
- [25] They therefore argue that the claim should be dismissed as there is no legal basis upon which a grant of a declaration for the picture list could be made.

### **The Interested Party's Submissions**

- [26] The interested party contends that there is no compelling public interest warranting disclosure. Moreover, Parliament has established a specific mechanism for challenging elections, including provisions for the disclosure of specific election documents under certain circumstances. As the Claimant has neither pleaded nor provided clear evidence that the documents are necessary for initiating or maintaining a legal action related to ballot papers or election offenses, he should not be allowed to circumvent the established parliamentary process to obtain the picture list. The Interested Party further contends that had there been any issues that affected the outcome of the election, the Claimant should have pursued the established legal remedy of filing an election petition within the prescribed timeframe outlined in the Representation of the People Act.
- [27] Finally, the interested party argues that the FOIA does not supersede the Constitution or the Representation of People Act. Therefore, it is not applicable to the matters at hand, which are governed by the specific provisions of the election laws.
- [28] Alternatively, the interested party argues that even if Section 24 of the FOIA were applicable, public policy considerations would still outweigh the public interest in disclosure. They contend that the picture list is essentially a copy of the publicly accessible voter register, with the addition of photographs. Disclosing this list to the Claimant would grant the Claimant access to images of registered voters. The interested party asserts that any disclosure of the picture list should be governed by the specific provisions of the election laws, rather than the broader provisions of the FOIA.
- [29] The Interested Party also cites Section 24 of the FOIA, which states that a public authority may refuse to disclose information if doing so would result in the unreasonable disclosure of personal information about a third party. Based on the arguments presented, the Interested Party argues that the claim should be dismissed.

### **THE ISSUES**

- [30] The issues which fall to be determined are:
- i. Whether the High Court has jurisdiction to determine this matter?

- ii. Whether the Claimant is entitled to a disclosure of the electoral list with photographs pursuant to the Freedom of Information Act?

## **Analysis and Law**

### **Whether the High Court has jurisdiction to determine this matter**

- [31] The Claimant commenced this action under CPR 53, seeking a declaration regarding the picture list pursuant to Section 24 of the Representation of the People Act. However, both the Defendants and the Interested Party have challenged the Court's jurisdiction, arguing that the matter should have been initiated through an election petition. This jurisdictional question is fundamental and could potentially determine the outcome of the case. Therefore, this Court must first determine whether an ordinary claim is the correct legal route for obtaining such relief, or whether in the circumstances an election petition is required.
- [32] The Defendants and the Interested Party align in their assertion that the present proceedings constitute an election matter, necessitating their initiation through an election petition before the Election Court, rather than the High Court. Both parties contend that the Claimant's challenge to the accuracy of the electoral register and the picture list strikes at the core of the electoral process. They argue that such matters are exclusively within the jurisdiction of election courts, which possess the specialized expertise and procedures to handle electoral disputes.
- [33] The Claimant contends that this is not an election petition as it does not seek to challenge the outcome of the election or overturn the results. Instead, the Claimant posits that this is a straightforward request for access to the picture list under the provisions of the FOIA. The Claimant asserts that this is an administrative claim seeking a declaration that the FOIA entitles him to access the requested information. The Claimant's argument hinges on the notion that the FOIA provides a broad right of access to government information, subject to certain limitations. He contends that the picture list is a public document and that there is a strong public interest in transparency and accountability.
- [34] The starting point in resolving this issue is section 24 of the Representation of the People Act. Section 24 governs the preparation and usage of the picture list, which is a tool to aid the accuracy and transparency of the electoral process. This provision supports the verification of voter's identities and is integral to maintaining a fair and transparent election process. However the statute is silent on whether this list remains accessible to individuals post-election. The question therefore is whether the request pertains to the broader electoral integrity which is

typically the subject of an election petition or whether it constitutes an independent procedural matter appropriate for an ordinary claim.

[35] The Claimant asserts that his sole purpose is to compare the picture list with the electoral list as a procedural exercise. He has not challenged the validity of the election results, and all parties agree that no such challenge has been filed, nor have any irregularities or non-conformities with the electoral law been alleged. The Claimant's request is simply for access to information, not a challenge to the electoral outcome.

[36] A request for information for public scrutiny is distinct from election petitions, which are specifically designed to challenge the validity of elections<sup>6</sup>. A request for a declaration compelling the production of a picture list does not inherently constitute an election challenge, particularly if the intent is purely informational or transparency related. The Claimant's request does not undermine the finality of the election results or challenge the legitimacy of the elected government neither does it challenge the accuracy and conduct of the electoral process. An election petition would only be necessary if the Claimant sought to challenge or alter the outcome of the elections through his request. Therefore, I find that this court has jurisdiction to determine this matter.

### **Whether the Claimant is entitled to a disclosure of the electoral list with photographs pursuant to the Freedom of Information Act**

[37] The Court must now determine whether the Claimant's request for the picture list is permissible under the FOIA. While the FOIA is a more recent piece of legislation than the Representation of the People Act, and section 16 does not explicitly exclude the disclosure of the picture list as an exemption, the FOIA must be interpreted holistically as the FOIA contains provisions that empower public authorities to withhold sensitive information, and the picture list may fall within such categories. Specifically sections 24 and 26(1) of the FOIA provides as follows:

“24. Notwithstanding any provision in this Part, a public authority may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless

---

<sup>6</sup> Section 43(1) of the Representation of the People Act reads “(1) No election and no return to the House of Representatives shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as an election petition) presented in accordance with this Part.”



the harm that would result from the refusal outweighs the public interest in the disclosure of that information.

26. (1) A public authority may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a third party who is a natural person.”

- [38] Additionally, the case of **Darren Baptiste v. The Police Service Commission of Trinidad and Tobago**<sup>7</sup> provides valuable insight into the balancing of public interest in disclosure versus confidentiality. In that case, Darren Baptiste challenged his exclusion from the promotion list to the rank of Corporal. He argued that the promotion process was unfair and lacked transparency. He requested copies of the academic qualifications and letters of recommendation of other candidates. The court examined Mr. Baptiste's rights under the Freedom of Information Act (FOIA) and determined that he was entitled to receive copies of the academic qualifications but not the letters of recommendation. The court reasoned that disclosing the letters of recommendation could have negative consequences, such as discouraging individuals from providing candid assessments for fear of public scrutiny or potential repercussions. This could lead to less candid and informative reference letters. The court held that the public interest in maintaining the confidentiality of reference letters outweighed the public interest in disclosure, as disclosing such information could have negative consequences, such as discouraging candid assessments.
- [39] Given the above the Court must balance the public interest in transparency and accountability, as promoted by the FOIA, with the need to protect sensitive personal information and maintain the integrity of the electoral process. Despite the Claimant's assertion that he is not interested in how electors voted, the reality is that the picture list used during the voting process contains sensitive personal information about certain assisted voters, including details about their specific needs and voting preferences. The disclosure of such information could have serious privacy implications for the affected individuals. It could potentially expose them to harassment, discrimination, or other forms of harm. Additionally, it could undermine the integrity of the electoral process by discouraging individuals from seeking assistance with voting, particularly in cases where they may feel stigmatized or vulnerable.
- [40] Moreover, the disclosure of this information could have broader societal implications. It could erode public trust in the electoral system and discourage voter participation. If individuals believe

---

<sup>7</sup> CV2007-03288 High Court of Trinidad and Tobago

that their voting choices are not confidential, they may be less likely to exercise their right to vote. This could ultimately lead to a less representative and less democratic society. I find therefore that the public interest in maintaining the confidentiality of the picture list outweighs the public interest in disclosure.

- [41] Although the Claimant's suggestion of providing an unmarked picture list was raised only in oral submissions and is not strictly necessary for the determination of this matter, I will briefly address this point for the sake of completeness.
- [42] The Claimant, without providing any evidence, suggests that the Defendants could produce an unmarked copy of the picture list. However, Section 9 of the Data Protection Act<sup>8</sup> stipulates that personal data should only be retained for as long as necessary and should be destroyed or deleted when no longer required. This contradicts the Claimant's suggestion that an unmarked list could be easily provided particularly as this matter was commenced ten months after the election.
- [43] Further, even an unmarked picture list could still contain sensitive information. The inclusion of photographs alongside names, addresses, and other identifiers significantly increases the sensitivity of the data.
- [44] Photographs, particularly facial images, can be used to identify individuals and track their movements and used in profiling. This information, when combined with other personal data, could potentially be used for malicious purposes, such as identity theft, stalking, or harassment. In particular, in the Caribbean context, there have been instances where individuals' photographs have been misused for nefarious purposes. Additionally, the release of the picture list could undermine public trust in the electoral process by raising concerns about the privacy and security of voter information.
- [45] While there is a public interest in transparency and accountability, it is important to balance this interest with the need to protect individual privacy and the integrity of the electoral process. In this case, the potential harms of disclosing the picture list, including the risk of privacy breaches and the erosion of public trust, outweigh the potential benefits.

## ORDER

---

<sup>8</sup> '(1) The personal data processed for any purpose shall not be kept longer than is necessary for the fulfilment of that purpose.

(2) It shall be the duty of a data user to take all reasonable steps to ensure that all personal data is destroyed or permanently deleted if it is no longer required for the purpose for which it was to be processed.'

[46] The claims made pursuant to the Fixed Date Claim are dismissed.

[47] No order as to costs.

**Jan Drysdale**

**High Court Judge**



**By The Court**

**Registrar**