

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 April 2012

**Public Authority:** The Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested information about an individual's status with respect to UK citizenship. The Home Office refused to disclose the requested information citing the personal information exemption provided by section 40(2) of the Freedom of Information Act 2000. The Information Commissioner's decision is that the Home Office acted correctly in refusing to disclose the information. He requires no steps to be taken.

#### Request and response

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2. The complainant wrote to the UK Border Agency (UKBA) on 21 August 2011, describing particular circumstances, as a result of which he requested information in the following terms:

*"In the circumstances, therefore, I have good grounds to be provided with official information showing whether or not [named individual] is a UK citizen, or whether he is a Nigerian citizen who is in the UK on some sort of temporary permission".*

3. The UKBA responded on 21 September 2011 citing section 40(3) of FOIA (personal information). It explained that the requested information is exempt from disclosure because disclosure of the requested personal information would breach the Data Protection principles.
4. On 1 November 2011 the UKBA upheld its decision not to disclose third party information, stating that it would not disclose the information in this case unless requested to do so by a court order. The complainant contacted UKBA again on 8 November 2011, requesting a 'proper

review'. UKBA responded on 29 November 2011, re-stating its position that it would not disclose the information unless requested to do so by a court order.

## Scope of the case

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5. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. The Information Commissioner understands that the request for information in this case was made against the background of a legal dispute.
6. Following an attempt at informal resolution, the complainant confirmed that he would like the Information Commissioner to issue a decision notice in this case.
7. The Information Commissioner notes that under the FOIA the UK Border Agency (UKBA) is not a public authority itself but an executive agency of the Home Office, which is responsible for the UKBA. Although the complainant corresponded with the UKBA, the public authority in this case is the Home Office rather than the UKBA. Therefore the Information Commissioner corresponded with the Home Office during his investigation.
8. The Information Commissioner considers the scope of his investigation is with respect to the Home Office's citing of section 40 (personal information).

## Reasons for decision

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9. During the Information Commissioner's investigation, the Home Office clarified that it considered that the information at issue in this case was exempt from disclosure under section 40(2) of the FOIA by reason of the condition at section 40(3)(a)(i). In other words, the requested information is the personal information of a third party and is exempt from disclosure because disclosure would contravene one of the data protection principles.

*Is the requested information personal data?*

10. The definition of personal data is set out in section 1 of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.

11. The Information Commissioner considers that the wording of the request, which includes the name of the individual, means that an individual is clearly identifiable in this case.
12. The requested information is essentially the answer to the question whether the named individual is a UK citizen, or whether he is a Nigerian citizen who is in the UK on some sort of temporary permission.
13. In either case, the Information Commissioner considers that whether or not a named individual is a UK citizen is clearly information which falls under the DPA's definition of personal data. Therefore, confirmation in this case would constitute a disclosure of that individual's personal data.

*Would disclosure breach one of the Data Protection principles?*

14. The first data protection principle states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met'.*

15. Having established that the information constitutes personal data, the Information Commissioner has examined whether the disclosure would comply with the first data protection principle's requirement that it be fair to the data subject.

*Would disclosure be fair?*

16. In determining whether a disclosure is fair under the first principle of the DPA for the purposes of section 40 of the FOIA, the Information Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency, as well as any legitimate interests which arise in the specific circumstances of the case.

*Reasonable expectations of the data subject*

17. The Home Office did not provide any submissions with respect to the reasonable expectations of the data subject. However, taking into account the fact that disclosure under the FOIA is essentially a disclosure into the public domain, the Information Commissioner considers that the data subject would have a reasonable expectation of privacy in relation to the requested information in this case.

*Has the data subject consented to the disclosure?*

18. In correspondence with the Information Commissioner, the Home Office confirmed that it has not sought the data subject's consent to disclosure. It explained that:

*"As a general policy, UKBA do not ask individuals whether they would be content for their personal data held by the Agency to be disclosed to a third party".*

19. The Information Commissioner notes that there is no obligation on a public authority to seek the data subject's consent to disclosure. However, he considers it good practice to inform the data subject that a request for access to information about them has been made and to take any objections into account.

20. The Home Office also told the Information Commissioner that, in its view, taking account of the circumstances of the case:

*"we think it extremely unlikely that [named individual]'s consent would be forthcoming".*

*Consequences of disclosure on the data subject*

21. In the absence of argument from the Home Office as to what the impact of disclosure could be in this specific case, the Information Commissioner has considered what consequences may be likely to result.
22. When considering the consequences of disclosure on the data subject, the Information Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under freedom of information legislation is disclosure to the public at large and not just to the complainant.
23. In this case, he considers that the personal data relates to the named individual in a personal capacity. This is significant in that the Information Commissioner has made a clear distinction in previous decisions between requests for information relating solely to professional and public matters (ie work as a public official or employee) and information relating to individuals in their private capacity (ie their home, family, social life or finances).
24. The Information Commissioner is of the opinion that disclosing personal data is generally less likely to be fair in cases where the personal data relates to an individual's private life rather than to their public or professional life.

25. In this case, he considers disclosure of information, into the public domain, about the data subject's status as a UK citizen would be an unwarranted interference with the individual's privacy.

*Balancing the rights and freedoms of the data subject with legitimate interests*

26. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
27. In considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, in the Information Commissioner's view it is also important to consider a proportionate approach.
28. In this respect, the Home Office has argued that the public at large does not have a legitimate interest in whether or not the named individual is a UK or Nigerian citizen.
29. While the Information Commissioner understands the complainant's specific personal reasons for wanting access to the requested information, his investigation has to take into account the fact that disclosure under the FOIA is effectively an unlimited disclosure to the public at large, without conditions. The wider public interest issues and the fairness to the named individual must therefore be considered when deciding whether or not the information requested is suitable for disclosure.
30. Having considered all the circumstances of the case, the Commissioner has concluded that it would be unfair to the individual to disclose the withheld information and to do so would contravene the first principle of the DPA. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met.
31. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.

## Right of appeal

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32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**