

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2014

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

Decision (including any steps ordered)

1. The complainant requested a copy of the General Register Office Index of Births, Marriages and Deaths between 1983 and 2005. The Home Office refused to disclose this information, stating that as it was made available for inspection at seven sites around the country, the exemption provided by section 21 (information reasonably accessible by other means) of the FOIA was engaged.
2. The Commissioner's decision is that the Home Office cited section 21 correctly and so it was not obliged to comply with the complainant's request.

Request and response

3. On 3 March 2014, the complainant wrote to the Home Office and requested the following information:

"a copy of the GRO Index of Births, Marriages and Deaths between 1983 and 2005."
4. The Home Office responded on 31 March 2014. It stated that the request was refused and cited the exemption provided by section 21 (information accessible by other means) of the FOIA. Its reasoning for this was that the indexes requested by the complainant are made available at seven sites around the country.

5. The complainant responded on 31 March 2014 and requested an internal review. In arguing against the refusal of his request the complainant referred to section 102 of the Protection of Freedoms Act 2012¹, which provides for the release of datasets in a reusable format, and suggested that as the information made available is not in a reusable format it was not reasonably available to him.
6. The Home Office responded with the outcome of the internal review on 29 April 2014. The refusal of the request under section 21 was upheld and the Home Office referred to section 102 of the Protection of Freedoms Act amending section 11 of the FOIA, rather than section 21.

Scope of the case

7. The complainant contacted the Commissioner on 2 June 2014 to complain about the refusal of his information request. As his grounds for complaint, the complainant referred again to section 11 of the FOIA, as amended by section 102 of the Protection of Freedoms Act 2012. That amendment requires that datasets are supplied in a reusable electronic format where the requester expresses a preference for this. The complainant's reasoning was that the information was not reasonably accessible to him as it was not available in a reusable electronic format.
8. The Commissioner contacted the complainant on 15 July 2014 and provided an initial view on his complaint. It was stressed that section 11 of the FOIA relates to the format in which information that is to be disclosed is communicated; it does not provide any restriction on where section 21 can be engaged and this remains the case following the amendment to section 11 of the FOIA provided by section 102 of the Protection of Freedoms Act 2012.
9. The complainant was advised that this meant that if section 21 was engaged because the requested information is reasonably accessible to him, it would not be necessary to go on to consider section 11. Therefore, that the information he had requested was not made available in a reusable electronic format did not preclude section 21 from being engaged.
10. The complainant was asked to respond confirming whether he wished the Commissioner to consider his complaint, on the understanding that

¹ <http://www.legislation.gov.uk/ukpga/2012/9/section/102/enacted>

the Commissioner would consider in relation to section 21 only whether the information was reasonably accessible to him and not the specific point of whether it was available to him in a reusable electronic format. The complainant responded on 15 July 2014 and confirmed that he did wish the Commissioner to continue with his case and make a decision as to whether section 21 had been cited correctly.

Reasons for decision

Section 21

11. Section 21 of the FOIA provides that information is exempt if it is reasonably accessible to the applicant by means other than through section 1 of the FOIA. This is a class based exemption and it is not qualified by the public interest. This means that if the information is reasonably accessible to the applicant, it is exempt from section 1 of the FOIA.
12. Significantly in this case, section 21 can be engaged where information is made available for inspection. Information that is publicly available for inspection and for which facilities and systems to enable inspection are in place and readily available will be considered published for the purposes of the FOIA.
13. The case made by the Home Office is that the index requested by the complainant is reasonably accessible to the complainant as it is made available for inspection at seven sites around the country². The Commissioner notes that the Home Office has stated that the full index is available at each of these locations and has no grounds on which to find that these locations do not have appropriate systems in place to facilitate access. On this basis the Commissioner accepts that this information is published for the purposes of the FOIA.
14. The remaining issue is whether as a result of this publication the information is reasonably accessible to the complainant. In his aforementioned 15 July 2014 correspondence, the complainant argued that the information is not reasonably accessible to him as the registered address for the organisation he represents is some distance from the nearest location of this information. Brief research suggests that travelling from that registered address to the nearest location of the

² <https://www.gov.uk/research-family-history>

index would entail an approximately 60 mile drive or a three to four hour journey via public transport.

15. The view of the Commissioner is that by making the information available in seven locations around the country the Home Office has gone to some lengths to ensure that this information is accessible to all. Given this, his view is also that the journey required from the address referred to by the complainant is not so extreme as to be a basis on which he could conclude that the information is not reasonably accessible to the complainant.
16. In any event, the Commissioner notes that the address given by the complainant when he initially contacted the ICO, which was different from the registered address he cited later, is only a short distance from one of the locations of the index. He also notes that when initially arguing that the information was not reasonably accessible as it was not in a reusable electronic form, the complainant stated that he was "*...able to view the Index*".
17. For these reasons, the Commissioner finds that the requested information is reasonably accessible to the complainant. His overall conclusion is, therefore, that the exemption provided by section 21 was engaged and the Home Office is not obliged to comply with the complainant's request.

Right of appeal

18. 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: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

19. 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.
20. 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
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