

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 April 2015

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

### Decision (including any steps ordered)

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1. The complainant has requested information relating to the deportation of two individuals. The Home Office refused to confirm or deny whether it held this information and cited the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 40(5) correctly and so it was not obliged to confirm or deny whether it held this information.

### Request and response

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3. On 3 January 2015 the complainant wrote to the Home Office and requested information in the following terms:  
  
*"1. What was the total cost of deporting [names redacted] to Nigeria in 2014?*  
  
*2. Which security firm was involved in the deportation of [names redacted] to Nigeria in 2014?*  
  
*3. What was the cost of the security firm involved in the deportation of [names redacted] to Nigeria in 2014?*  
  
*4. What was the cost of the airfare for the deportation of [names redacted] to Nigeria in 2014?*  
  
*5. What were the reasons why [names redacted] were deported to Nigeria in 2014 before the end of their sentences?"*

4. The Home Office responded on 15 January 2015. It stated at this stage that the requests were refused under section 40(2) (personal information) of the FOIA.
5. The complainant responded on the same date and asked the Home Office to carry out an internal review. The Home Office responded with the outcome of the internal review on 5 February 2015 and stated that it now neither confirmed nor denied whether it held any information falling within the scope of the request and cited the exemption provided by section 40(5) (personal information) of the FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 8 March 2015 to complain about the refusal of his information request. The complainant indicated at this stage that he did not agree with the exemption cited by the Home Office.

### **Reasons for decision**

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#### **Section 40**

7. Section 40(5) of the FOIA provides an exemption from the duty to confirm or deny where to do so would involve the disclosure of personal data and that disclosure would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process: first, addressing whether confirmation or denial would involve the disclosure of personal data, and secondly, whether that disclosure of personal data would be in breach of any of the data protection principles.
8. Covering first whether confirmation or denial in response to the complainant's information request would disclose personal data, section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as follows:

*"personal data' means data which relate to a living individual who can be identified:*

- a. from those data, or*
- b. from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller".*

9. According to this definition there are two criteria to fulfil for information to constitute personal data; it must relate to a living individual and that individual must be identifiable from it. In this case, the subjects are identified in the wording of the request and the view of the Commissioner is that it is clear from that wording without it being necessary to go into detailed analysis that the confirmation or denial would disclose information that relates to those individuals by virtue of relating to their deportation. Confirmation or denial would therefore disclose information that constitutes the personal data of those individuals according to the definition given in section 1(1) of the DPA.
10. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be fair to the individuals named in the request. In forming a view on whether disclosure would be fair the Commissioner has taken into account the reasonable expectations of the data subjects, the consequences of disclosure upon the data subjects and whether there is legitimate public interest in the disclosure of this confirmation or denial.
11. Section 2 of the DPA lists what is to be considered sensitive personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject.
12. Any relevant information that the Home Office does hold would relate to the deportation of the individuals named in the request following their conviction for an offence. This information would therefore be the sensitive personal data of the data subjects, as defined in section 2 of the DPA.
13. That this information would be the sensitive personal data of the individuals named in the request is relevant here when considering their expectations about and the consequences of disclosure upon these individuals. Given the nature of the information that the confirmation or denial would relate to, the view of the Commissioner is that it is highly likely to be the case that the data subjects would hold a strong expectation that the confirmation or denial would not be disclosed by the Home Office and that disclosure despite this expectation would result in distress to those individuals.
14. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects, the

Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the confirmation or denial.

15. In conclusion, the Commissioner finds that the confirmation or denial would be the personal data of individuals other than the complainant and that the disclosure of that personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(5) of the FOIA is, therefore, engaged and the Home Office was not obliged to confirm or deny whether the requested information was held.

## Right of appeal

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16. 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: 0870 739 5836

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

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

17. 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.
18. 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 .....**

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