

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2015

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

Decision (including any steps ordered)

1. The complainant requested information relating to the citizenship status of the Prime Minister of Australia. 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 this exemption correctly and so it was not obliged to confirm or deny holding this information.

Request and response

3. The request was initially made on 3 February 2015 and was worded as follows:

"I am looking for the citizenship status of a person if they hold British citizenship or have they renounced it and if so the date renounced..."

Person Name: Anthony John Abbott D:O:B 4/11/1957"

4. It appears that this request was not initially dealt with under the FOIA. A response was provided that referred to the Data Protection Act 1998 (DPA), but did not confirm or deny whether the requested information was held, or give any grounds from the FOIA for refusing the request.
5. The complainant wrote to the Home Office again on 22 February 2015 and asked for clarification of which provision within the DPA prevented disclosure. The Home Office responded on 5 March 2015, but did not

address the question that had been asked in the 22 February 2015 email. Instead, this response appeared to address the 3 February request and stated that the Home Office could not confirm or deny whether the information was held under section 40(5) (personal information) of the FOIA.

6. The complainant was understandably confused by this and sought clarity in an email of 9 March 2015. The Home Office responded on 11 March 2015 and unhelpfully cited section 14(2) (repeated requests) on the grounds that the complainant's 9 March 2015 email repeated the information request he made on 3 February 2015. This meant that, from the complainant's perspective, his request for information relating to Mr Abbott had not been addressed under the FOIA, yet section 14(2) had been cited on the ground that it had been made repeatedly.
7. The complainant subsequently requested an internal review and the Home Office responded clarifying its position on 7 April 2015, which was that it neither confirmed nor denied whether the requested information was held in reliance on the exemption provided by section 40(5) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner initially on 22 April 2015 to complain about the refusal of his information request, indicating that he did not agree with the exemption cited by the Home Office.
9. An exchange of correspondence followed in which documentation in support of his complaint was sought from the complainant. The complainant responded on 19 May 2015 with the required documentation.

Reasons for decision

Section 40(5)

10. Section 1(1)(a) of the FOIA imposes a duty on public authorities to confirm or deny whether requested information is held. Section 40(5) provides an exemption from that duty where confirmation or denial would involve disclosure of personal data and where that disclosure would be in breach of any of the data protection principles.
11. Consideration of this exemption involves two stages. First, confirmation or denial in response to the request must involve a disclosure of

personal data and, secondly, that disclosure must be in breach of at least one of the data protection principles.

12. Covering first whether confirmation or denial in response to the complainant's request would involve a disclosure of personal data, the definition of personal data is given in section 1(1) of the DPA:

"personal data' means data which relates to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".

13. In this case the Commissioner considers it clear that confirmation or denial in response to the request would disclose personal data about Mr Abbott; the person named in the request. It would disclose whether or not the Home Office held information about whether Mr Abbott held British citizenship and about whether any such citizenship had been renounced. That information would clearly relate to Mr Abbott and he is identified in the wording of the request. The information would, therefore, constitute personal data according to the definition given in section 1(1) of the DPA.
14. The next step is to consider 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 data protection principle, which states that personal data shall be processed fairly and lawfully. In particular, the focus here is on whether disclosure would be, in general, fair to the data subject.
15. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subject and what consequences disclosure may have. He has also considered what legitimate public interest there may be in disclosure of the information in question.
16. When making its representations in this case, the Home Office argued that the personal data in question would be *sensitive* according to the definition of sensitive personal data given in section 2 of the DPA. However, as it has not been necessary given the conclusion of this analysis, the Commissioner has not considered in detail whether this personal data is sensitive and this analysis assumes that it is not.
17. Covering first the reasonable expectations of the data subject, the status of the person named in the request is relevant here; Mr Abbott is

the Prime Minister of Australia. That he holds a position of such seniority and high profile is relevant to the question of what reasonable expectation of privacy he could hold. The complainant would argue that his position, and the relevance that the issue of his citizenship status has to that position, means that it would not be reasonable for him to hold an expectation of privacy in relation to the requested information.

18. Brief online research reveals that Mr Abbott's citizenship status is a matter of debate. There are those who have questioned whether Mr Abbott holds British citizenship and suggest that this means he is ineligible to hold office. There have been calls for evidence of Mr Abbott's citizenship status to be disclosed into the public domain.
19. The Home Office has stated that its usual position is to not comment on the nationality status of any individual and it maintains that it should not do so in this case. It argues that Mr Abbott would hold a reasonable expectation that it would follow its normal approach and not disclose his personal data.
20. The view of the Commissioner is that *all* individuals are entitled to a level of privacy, whatever their status. He has taken this approach in relation to, for example, requests for personal data relating to members of the Royal Family, and in this case his view is that Mr Abbott does have a right to privacy even whilst he occupies high office.
21. As to what the background referred to above means for reasonable expectation in relation to the information in question here, the Home Office argued that the correct route to resolve any questions relating to Mr Abbott's eligibility for office would be the Australian judicial system. The Commissioner agrees; he is not of the view that the context means that Mr Abbott could not hold a reasonable expectation of privacy. The view of the Commissioner is, therefore, that Mr Abbott could reasonably expect the Home Office to take its normal approach and not comment on his citizenship status.
22. Turning to the consequences of confirmation or denial on the data subject, as mentioned above the view of the Commissioner is that the correct forum for resolving any legitimate question about Mr Abbott's eligibility for office is through the appropriate national channels and he has not taken into account on this point the questions that have been raised about eligibility. Instead his focus is on what the loss of privacy may mean for the data subject personally.
23. The Commissioner has already mentioned that his view is that all individuals regardless of status have a right to and legitimate expectation of privacy. The Commissioner's view is also that disclosure of the confirmation or denial in contravention of the reasonable

expectation of the data subject would be likely to be distressing to that individual, and that their distress would not be mitigated by the seniority of their office.

24. Turning to whether there is any legitimate public interest in the confirmation or denial, whilst section 40(5) is not a qualified exemption in the same way as some of the other exemptions in Part II of the FOIA, an element of public interest is necessary in order for disclosure to comply with the first data protection principle. The question here is whether any legitimate public interest that does exist outweighs the factors against disclosure covered above.
25. The complainant would argue on this point that there is a strong public interest in disclosure owing to the issues that have been raised about Mr Abbott's citizenship status. The Commissioner recognises that this is a matter of public interest, but again would note that it is an issue that should be settled through the appropriate Australian channels, including the question of whether information on this matter should be made public. His view is that there is not, therefore, legitimate public interest in the disclosure of this information on the basis of that issue.
26. The Commissioner's view is also that there is little other legitimate public interest in the disclosure of information relating to the citizenship of one individual, whatever their status. He does not, therefore, believe there to be any legitimate public interest in disclosure of this information that would outweigh the factors against disclosure covered above. His finding is, therefore, that disclosure of the confirmation or denial would be unfair and in breach of the first data protection principle.
27. The Commissioner has found that confirmation or denial in response to the complainant's request would involve the disclosure of the personal data of a third party and that this disclosure would be unfair and in breach of the first data protection principle. His conclusion is, therefore, that the exemption provided by section 40(5) of the FOIA is engaged and so the Home Office was not obliged to confirm or deny whether the information requested by the complainant was held.

Right of appeal

28. 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

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

29. 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.
30. 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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