

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 July 2016

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

Decision (including any steps ordered)

1. The complainant requested information relating to whether the UK citizenship of the first lady of Syria had been revoked. 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 so it was not obliged to confirm or deny whether it held the requested information.

Request and response

3. On 26 January 2016 the complainant wrote to the Home Office and requested information in the following terms:

"1. Has the Home Office conducted a review into the possibility of revoking the British citizenship of Mrs Asma Al-Assad (aka Al-Akhras), the first lady of Syria?

2. What was the outcome of this review?

3. I would like to request a copy of any Home Office decision or instructions related to this matter."
4. The Home Office responded and refused to confirm or deny whether it held the requested information, citing the exemption provided by section 40(5) (personal information) of the FOIA.

5. The complainant responded on 4 February 2016 and requested an internal review. The Home Office responded with the outcome of the review on 3 March 2016, the conclusion of which was that the refusal to confirm or deny under section 40(5) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 14 March 2016 to complain about the refusal of his information request. The complainant indicated that he did not agree with the reasoning of the Home Office for the refusal of his request.

Reasons for decision

Section 40

7. 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 disclosing personal data and where that disclosure would be in breach of any of the data protection principles.
8. 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.
9. 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”.*
10. In this case the Commissioner considers it clear that confirmation or denial in response to the request would disclose personal data about Mrs Al-Assad; the person named in the request. It would disclose whether or not the Home Office held information relating to the possible revocation of the UK citizenship of Mrs Al-Assad. That information would clearly

relate to Mrs Al-Assad and she is identified in the wording of the request. Providing a confirmation or denial would, therefore, constitute the processing of her personal data according to the definition given in section 1(1) of the DPA.

11. 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.
12. 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.
13. Covering first the reasonable expectations of the data subject, the status of the person named in the request is relevant here; Mrs Al-Assad is the wife of the President of Syria. That she holds a position of such high profile is relevant to the question of what reasonable expectation of privacy she could hold. The complainant would argue that Mrs Al-Assad's position, particularly in the context of the Syrian civil war, which began as an uprising against the Assad regime and in which that regime has been accused of war crimes, means that it would not be reasonable for her to hold an expectation of privacy in relation to the requested information.
14. Brief online research reveals that Mrs Al-Assad's UK citizenship has been a matter of debate. This has included calls for her UK citizenship to be revoked.
15. The Home Office has stated that it maintains that the confirmation or denial should not be disclosed in this case, even given Mrs Al-Assad's position in the Syrian regime. Its position is that arguments concerning the actions of the Syrian regime do not apply *"with the same force"* in relation to Mrs Al-Assad as they would in relation to the President of Syria.
16. The view of the Commissioner is that he agrees that it is clearly the case that factors relating to the current situation in Syria apply with far less force in relation to Mrs Al-Assad than they would in relation to the President of Syria, or other senior members of the Assad regime. He is also of the view 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 Mrs Al-Assad does have a right to privacy, even given her status, and so would hold a reasonable expectation of privacy in this case.

17. Turning to the consequences of confirmation or denial on the data subject, the focus here is on what the loss of privacy may mean for the data subject personally; the wider context is not directly relevant. 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 her, and that her distress would not be mitigated by her position in relation to the Syrian regime.
18. 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.
19. The complainant would argue on this point that there is a strong public interest in disclosure owing to the situation in Syria, including allegations of war crimes by the regime with which Mrs Al-Assad is associated. The Commissioner recognises that this is a matter of public interest, but he does not believe that the wider public interest concerning matters about the Syrian civil war relates closely to the confirmation or denial in question here. Providing that confirmation or denial would add nothing to public knowledge or understanding of events in Syria, or the extent to which Mrs Al-Assad should be considered a party to the actions of the Syrian regime. His view is that there is not, therefore, legitimate public interest in the disclosure of this information on the basis that it relates to someone associated with the Syrian regime.
20. 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.
21. 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 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

22. 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>

23. 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.
24. 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

Ben Tomes
Senior Case Officer
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