

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2017

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

Decision (including any steps ordered)

1. The complainant has requested information about citizenship refusals from the Home Office (the "HO"). The HO refused to provide this citing section 40(2) (personal information) of the FOIA on the basis that individuals could be identified.
2. The Commissioner's decision is that the HO has incorrectly applied the exemption for personal data at section 40(2) of the FOIA as the withheld information is sufficiently anonymised to take it out of the definition of personal data. The Commissioner therefore requires the HO to take the following steps to ensure compliance with the legislation:
 - disclose the requested information.
3. The HO must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. Following a previous request, on 29 April 2016 the complainant wrote to the HO and requested information in the following terms:

"I note from the Home Office's own published statistics that it compiles statistics for citizenship refusals, including figures for 'not of good character' [example provided¹]...

... I therefore ask for similar information to that previously requested, with the parameters narrowed to those refused citizenship under the 'not of good character' category but for each of 2013, 2014 and 2015.

Specifically:

1) I would be grateful if you would tell me how many people refused citizenship for being 'not of good character' were suspected of involvement in war crimes, crimes against humanity, genocide or torture in 2013, 2014 and 2015.

2) In relation to question 1), please provide a breakdown of the nationalities.

3) In relation to question 1), how many cases were referred to the Met Police for investigation?

4) How many people of those identified in question 1) remain in the UK? (Alternatively, how many have been removed from the UK)".

5. On 19 August 2016 the HO responded. It provided information in respect of parts (1), (3) and (4) of the request but refused part (2) citing section 40(2) of the FOIA.
6. The complainant requested an internal review on 19 August 2016. Despite the Commissioner's intervention this remains outstanding. The Commissioner has therefore used her discretion and accepted the complainant's complaint without an internal review.

Scope of the case

7. The complainant initially contacted the Commissioner on 5 October 2016 to complain about the way his request for information had been handled, specifically that he had not received an internal review. On 22 October 2016 the Commissioner wrote to the HO and asked it to provide an internal review within 10 working days.
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¹ <https://www.gov.uk/government/statistics/immigration-statistics-october-to-december-2015-data-tables>

8. On 10 January 2017 the complainant again wrote to the Commissioner to advise that his internal review remained outstanding. The Commissioner contacted the HO on 11 January 2017 and was advised that there were 'internal differences' which were causing the delay.
9. The Commissioner advised both parties that she would therefore proceed directly to an investigation. She will therefore consider the citing of section 40(2) below.
10. It is also important to note that the HO initially provided the Commissioner with figures 'rounded' to the nearest 5 rather than actual figures. The complainant did not ask for rounded figures and the findings in this investigation relate to the actual figures held.

Reasons for decision

Section 40 – personal information

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 1998 ('DPA'). If it is not personal data then section 40 cannot apply.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the HO considers that disclosure would breach the first data protection principle.
14. In order to rely on section 40(2) the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as:

*" ...data which relate 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,
and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

15. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. From the definition above, it follows that information or a combination of information, that does not relate to and identify an individual, is not personal data.

The HO's view

17. The HO has argued that:

"The nationality data is that of individuals who have been refused UK citizenship and to disclose it would present serious section 40(2) considerations. The numbers are so small that if we were to provide the data there is a significant risk that individuals could be identified. Even a simple Google search brings up names and nationalities of those resident in the UK who may/have committed war crimes, but cannot be deported because they will face retribution in their own country of origin.

We conclude that the risk of identification is such that the information constitutes personal data as defined in section 1(1) of the Data Protection Act (DPA). We consider that this applies to all of the withheld information in respect of each country listed".

The Commissioner's view

18. A test used by both the Commissioner and the First-tier tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of reidentification of an individual from information which, on the face of it, appears truly anonymised.

19. The ICO's Code of Practice on Anonymisation² notes that:

² <https://ico.org.uk/media/fororganisations/documents/1061/anonymisation-code.pdf>

"The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)] stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA".

20. In summary, the motivated intruder test is that if the risk of identification is "*reasonably likely*" the information should be regarded as personal data.
21. The main issue for the Commissioner to consider is whether or not the disclosure of the countries caught by the request, along with the associated figures, would reveal the identities of any of the related individuals.
22. Having had the opportunity to review the withheld figures the Commissioner accepts that some of the numbers are low. However, even where the number may be low, the Commissioner does not consider that this in itself means that the information is personal data.
23. The Commissioner notes that the HO claims that disclosing the countries would allow individuals to be identified from the figures provided and other information in the public domain. However, the HO did not provide any actual evidence as to how a figure allowed such identification.
24. Having had sight of the figures, the Commissioner has conducted her own online searches in order to try and identify parties. Whilst she has found related information, including speculation as to the identity of parties for similar information which has previously been made available, she has not found anything which actually names any person. Furthermore, it is not known how long the parties have been in the UK, whether this was their first attempt to obtain citizenship or whether they have made multiple applications. Additionally, their sex and age is not known.
25. Whilst it is technically possible that one of the individuals may be able to identify him or herself from the disclosure of the withheld information, because they know that they failed a citizenship application in a particular year, the Commissioner is satisfied that that individual would obviously already know that information. However, in light of the above, and having considered the withheld information, the Commissioner does not consider that any individual could be identified by another party from the withheld information.
26. Consequently, the Commissioner has decided that the withheld information does not constitute personal data and that the exemption in section 40(2) is not applicable.

Other matters

27. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

28. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases, which this request was not.
29. The Commissioner would like to remind the HO that she routinely monitors the performance of public authorities and their compliance with the legislation. Records of procedural breaches are retained to assist the Commissioner with this process and further remedial work may be required in the future should any patterns of non-compliance emerge.

Right of appeal

30. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Carolyn Howes
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