

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2017

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

Decision (including any steps ordered)

1. The complainant requested a list of names and associated details of individuals 'presumed dead' under the Presumption of Death Act 2013. The Home Office refused to provide the requested information on the basis that it is reasonably accessible by other means (section 21 of FOIA).
2. The Commissioner finds that section 21 applies to all of the requested information. She does not require the Home Office to take any steps to comply with FOIA.

Background

3. The Commissioner understands that the Registrar General for England and Wales is the Head of the General Register Office (the 'GRO'). The GRO is part of Her Majesty's Passport Office which is itself part of the Home Office. The Registrar General (also the Director General of Her Majesty's Passport Office) has a statutory responsibility to ensure that there is an efficient and effective system for the registration of births, still-births, deaths, marriages and civil partnerships.
4. The Registrar General holds the Presumption of Death Register ('PODR') in electronic form. The statutory access regime provides a framework for applicants to request a certified copy of an entry of births, marriages and deaths from the GRO; similarly the regime allows the GRO to release information from it only in the form of a certified copy (certificate), or where other legislation specifically permits disclosure.

5. The Register of Presumed Deaths was introduced by the Presumption of Death Act 2013 which came into force on 1 October 2014. In order for the GRO to supply information from these entries, the statute stipulates that an applicant needs to identify an entry and pay a statutory fee (currently £9.25). The GRO then issues a certified copy (or certificate) of that entry. The Home Office has confirmed that this is the statutory access regime for obtaining the information requested and that there is no other way that this information will be made available.
6. The Commissioner also understands that four times a year the GRO receives, from each register office, copies of each register entry of births, deaths and marriages which they have compiled. The GRO is obliged to compile a national index to these entries and groups the entries in such a way that they can provide a meaningful index and enable the public to search.

Request and response

7. On 19 July 2016 the complainant wrote to the Home Office and requested information in the following terms:

"I require a list of persons registered at the GRO as 'presumed dead' under the Presumption of Death Act 2013.

Please let me have their –

 - 1 Full names
 - 2 DOB
 - 3 Death of death [sic]
 - 4 Circumstances causing them to be presumed dead"
8. The Home Office responded on 17 August 2016, citing sections 21 and 22 of FOIA; however it did provide the total number of registrations made from 1 January 2015 up to 26 July 2016 in the Register of Presumed Deaths.
9. The complainant requested an internal review on 28 August 2016. The Home Office did not provide its internal review until 4 November 2016. It maintained that sections 21 and 22 applied but, in order to assist the complainant with accessing the information, it provided a mocked up index page in the same format that the information is shown in the publicly available microfiches which hold the death indexes. It explained how to identify entries for those presumed dead ("__" and a "000"), then read across to find the deceased's name, which would then enable the complainant to pay for and order a certified copy of that person's death entry. It said this certified copy will provide him with the other information he requires.

Scope of the case

10. The complainant contacted the Commissioner on 24 October 2016 to complain about the way his request for information had been handled. Whilst he did not submit any specific grounds of complaint, he had contacted the Home Office following its internal review to advise that he had not been able to find an entry for a named individual presumed dead on 2 November 2011, following a search of the death indexes at Birmingham Central Library. This had caused the complainant to consider that the information is not reasonably accessible.
11. The Commissioner raised this matter with the Home Office. It said it had contacted the GRO regarding the named individual and that, having checked the indexes and those held at Birmingham, there is an index entry relating to that individual, complete with the presumption of death identifying code "-000". It said that the complainant can apply for the certificate should he want it and clarified that he would only need to use the indexes to identify any entries for which he does not have any details. For information on ordering a death certificate the complainant should follow the guidance in this link¹.
12. The Home Office initially relied on section 22, in addition to section 21, when responding to the request (and at the internal review stage) in relation to the publication of the death indexes which are updated on a quarterly basis. It explained that at the time of receiving both the request and internal review, all of the court declarations received had been registered and added to the index, and said that section 22 was cited in order to cover the point that any further information would be published in the future.
13. However, it now said that it did not consider it to have been necessary to have cited section 22 at the time of the request; instead it would have been more appropriate to have just explained the process for further information being made available.
14. As a result, the Commissioner has only considered whether the Home Office has properly applied section 21 to the request and thereby whether the requested information is reasonably accessible by other means.

¹ <https://www.gov.uk/order-copy-birth-death-marriage-certificate>

Reasons for decision

15. Section 21(1) of FOIA states that:

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

16. This means that where a complainant is reasonably able to obtain the information from another source then the information is exempt from disclosure under FOIA.

17. Section 21(2) (a) states:

"information may be reasonably accessible to the applicant even though it is accessible only on payment".

18. This means that even where the complainant would be required to pay a fee to obtain the information from the other source the exemption will still be applicable.

19. Section 21(2)(b) states that

"Information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."

20. This means that where an authority is obliged to provide that information to a requestor by law then that information will be deemed to be reasonably accessible for the purposes of the exemption.

21. Although the Home Office did not originally cite section 21(2)(b), it said during the Commissioner's investigation that it wished to substitute section 21(1) for 21(2)(b), explaining that there is a legal duty under section 1(2) of the Presumption of Deaths Act 2013 for the Registrar General to make this information available. On receipt of a declaration in accordance with Schedule 1 sub-paragraph (2)², the Registrar General must:

² <http://www.legislation.gov.uk/ukpga/2013/13/schedule/1>

- (a) Make an entry in the Register of Presumed Deaths containing the name of the missing person and such other information as may be prescribed in relation to that person's presumed death
 - (b) Secure that the entry made in the Register of Presumed Deaths is included in the index of the register of deaths.
22. The Home Office told the Commissioner that the Presumption of Death Act 2013 provides for a copy of the declaration of death made by the High Court in England and Wales to be sent to the Registrar General, together with the information prescribed in the regulations. On receipt of a copy of the declaration, the Registrar General enters on the register the name of the person declared 'presumed dead' and the other information specified in the regulations. The Registrar General also includes the registration in the index of deaths registered; the index data includes name, date of birth, date of registration, district name and district number.

Is the information reasonably accessible under other legislation?

23. Any person who knows the name of an individual who has been declared as presumed dead with sufficient information for the relevant entry to be traced in the register, can obtain a certificate/certified copy of the register entry from the GRO on payment of the prescribed fee (currently £9.25 per certificate). The name of the individual declared presumed dead and the other information in the register entry will be shown in the certificate.
24. If a member of the public does not know the name of the person (or persons) thought to be presumed dead, the Home Office confirmed it is still possible for a search to be carried out. A presumption of death entry can be identified by a "___" and "000" in the district name and district number columns. The death indexes are made available to the public in microfiche format at a number of host sites (public libraries/archives). There are seven such sites in total and the Home Office confirmed it had provided the complainant with a weblink which explained where these are located³.
25. In this case, the Home Office said it has taken into account the particular circumstances of the complainant when deciding whether access to the information is reasonable, in that as he had submitted his request via email it was considered reasonable to direct him initially to information contained in the web pages. Whilst acknowledging that the

³ <https://www.gov.uk/research-family-history>

next part of accessing the information would necessitate a visit to one of the seven locations specified, the Home Office said its general position is that because the locations are public libraries spread across the UK, they are reasonably accessible to members of the public in that they can choose the location that is nearest to them. The Home Office understands, as does the Commissioner, that the complainant did attend Birmingham Central Library, so it is satisfied the information is reasonably accessible to him.

26. The Commissioner is mindful of her guidance on section 21⁴ which cites that where there is a legal duty to make information available, that information can be considered to be reasonably accessible to the applicant whether or not payment is required. One such example of where this provision will apply is a certificate of registration using a birth certificate but exactly the same principle applies to death certificates, (paragraphs 32 and 33).
27. The Commissioner is also mindful of her guidance on *"Information in the public domain"*⁵ (paragraph 33) which states that:

"Information available for a fee may still be considered available to the public:

Example

In S v Information Commissioner and GRO (EA/2006/0030, 9 May 2007), the Information Tribunal decided that the information on a death certificate was in the public domain despite the payment of a fee: "the Tribunal is satisfied that the public record is the entry created in the Death Register. Only the specific information required to be put on the death certificate is accessible to the public. This is apparent from the fact that a copy is available following the payment of a fee by any member of the public."

28. The Commissioner is aware that to accept the complainant's position that the information on those presumed dead should be made available via FOIA, would mean that those applying to the GRO for information from the registers would not in future need to apply for a certified copy and pay the statutory fee. Instead, they would only need to submit a

⁴http://ico.org.uk/for_organisations/guidance_index/~//media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf

⁵http://ico.org.uk/~//media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information-in-the-public-domain-foi-eir-guidance.ashx

request under FOIA for the relevant documentation. The Commissioner accepts that this is not the intention of FOIA when a legislative framework already exists for the release of information.

Conclusion

29. Having considered this case, the Commissioner is satisfied that the requested information should not be provided under FOIA, but instead under the provisions of the Presumption of Deaths Act. She is satisfied that the information is reasonably accessible by the purchase of a certified copy of each entry for which the information is required. Further, where the name of an individual presumed dead is not known by the requester, those 'presumed dead' can be located by searching a specific identifier within the publicly available microfiche indexes, held in seven locations, followed by the purchase of a certified copy. The Commissioner finds that the requested information is therefore exempt under section 21(2)(b) of FOIA.

Other matters

30. Part VI of the section 45 Code of Practice makes it 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. As she has made clear in her *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided 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 be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 49 working days for an internal review to be completed, despite the publication of her guidance on the matter.

Right of appeal

31. 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

32. 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.
33. 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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