

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2012

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

Decision (including any steps ordered)

1. The complainant requested,

“The number of occasions when an order (depriving a person of UK citizenship) has been made because the individual had known or suspected terrorist connections or intent, as opposed to orders made as a result of other national security concerns, or because the Home Secretary concluded that such a measure was conducive to the public good for reasons unconnected with national security.”
2. The Home Office relied on section 40(2) not to communicate the requested information to the complainant.
3. The Commissioner’s decision is that the withheld information is not ‘personal data’ and therefore cannot be exempt from disclosure on the basis of section 40(2).
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - disclose the requested information
5. The public authority 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.

Background

6. The Secretary of State may issue an order that deprives a person citizenship status if satisfied, amongst other things, that the person holds dual citizenship and that deprivation is conducive to the public good. (Section 56 of the Immigration, Asylum and Nationality Act 2006).

Request and response

7. The complainant, on the 15 June 2011, wrote to the Home Office and, amongst other things, requested information in the following terms:
 - How many dual nationals have been deprived of British citizenship under section 56 of the Immigration, Asylum and Nationality Act 2006?
 - The number of occasions when a deprivation (of citizenship) order has been made because the individual had known or suspected terrorist connections or intent, as opposed to orders made as a result of other national security concerns, or because the Home Secretary concluded that such a measure was conducive to the public good for reasons unconnected with national security.
8. The Home Office responded on 12 July 2011 and provided the number of dual nationals deprived of British citizenship as requested by the complainant. However, as to the number of occasions when a deprivation order was made because the individual had known or suspected terrorist connections or intent, as opposed to other grounds, the Home Office said that this information was exempt from disclosure under section 40(2) of FOIA.
9. Following an internal review the Home Office wrote to the complainant on 11 August 2011 informing him that it considered that the original decision to withhold information was correct.

Scope of the case

10. The complainant, on the 11 August 2011, contacted the Commissioner to complain about the handling of his request for information.

Reasons for decision

11. The Home Office has provided the total number of people (13) deprived of citizenship via an order made under section 56 of the Immigration, Asylum and Nationality Act 2006. However it relies on section 40(2) to withhold the numbers of people deprived of citizenship on the basis of known or suspected terrorist connections or intent.
12. Information is exempt from disclosure by virtue of the exemption at section 40(2) of FOIA if the information constitutes personal data and either the first or the second condition in section 40(3) is satisfied.

Is the withheld information personal data

13. Personal data is defined in section 1(1) of the Data Protection Act 1998 (the DPA) as:

...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual

14. Truly anonymised data is not personal data and thus is disclosable without reference to the Data Protection Act. The Commissioner does not accept that where a public authority holds information to identify living individuals from the anonymised data, that this turns the anonymised data into personal data. However if a member of the public can, on the balance of probabilities, identify individuals by cross-referencing the anonymised data with other information that was available to them, then the information is personal data. Whether it is possible to identify individuals from the anonymised data is a question of fact based on the circumstances of the specific case.
15. As stated above the Home Office has provided the total number of people (13) deprived of citizenship. The withheld information is the number of people deprived of citizenship due to their suspected terroristic behaviour. The Commissioner's view is that a number in isolation cannot be personal data. However, a number in combination with other information available to the public can be personal data¹.

¹ Department of Health –v- Information Commissioner ([2011] EWHC 1430 (Admin))

16. The Home Office argued that by using the withheld information and other information in the public domain individuals could be identified and the reason why they had been deprived of their citizenship.
17. The Commissioner asked the Home Office for the "other" information that combined with the withheld information would enable the deduction of the identity of those excluded.
18. The Home Office supplied three links to information on the internet. These were pages from a United Kingdom newspaper. It also stated that this type of information can be considered alongside information about current or previous court cases, in which individuals (anonymised, but the reasons for deprivation are usually cited by the court) are challenging the decision to deprive them of citizenship . If this is done then it becomes more likely that those with an interest in this type of information can begin to narrow down precisely who has done what.
19. Two of the three articles provided by the Home Office post date the complainant's request for information. The Commissioner would not normally consider evidence or material that postdates a refusal for information. This is since he must reach a decision on the facts and knowledge as known, or believed, by the public authority at the time of its refusal to meet an information request. Nonetheless the Commissioner will consider these articles as they appear to lend credence to the assertion made by the Home Office that the withheld information is personal data when combined with information likely available to the public . These are the articles of the type that the Home Office believed to be likely available to the public and it would be the Commissioner's error to ignore them given that their existence as envisaged by the Home Office has transpired. It is evidence to assist in the Commissioner's determinations whether the assertions of the Home Office had credibility.
20. Having considered them the Commissioner does not agree that the existence of the type of information in the articles, in combination with the withheld information, significantly increases the likelihood of identification of individual data subjects and the reason why they had been deprived of their citizenship.
21. As to the assertion that a cross-read between relevant court decisions, newspaper articles and the withheld information would enable the identification of individuals, the Commissioner notes that the names in court decisions are anonymised. This starting point of anonymity undermines the assertion of the Home Office. An observer may speculate as to the identity of a person deprived of citizenship, due to the said cross-read, but it is a speculation not founded on acceptable

positive evidence that could be combined with the release of the withheld information.

22. The Commissioner therefore finds that he has not been presented with strong enough evidence to suggest that risk of identification is greater than remote and is reasonably likely; information in the public domain would not have enabled clear identification to take place. The Home Office have not presented any other evidence that that different information, that would enable clear identification, is likely to reach the public domain.
23. Accordingly, the Commissioner finds that the withheld information is anonymous data and not personal data. The section 40(2) exemption is not engaged and the Commissioner directs that it be released to the complainant.

Right of appeal

24. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

25. 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.
26. 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

Steve Wood
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