

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2014

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

Decision (including any steps ordered)

1. The complainant requested information relating to a specific individual within a file titled "*HO45/25743 War: Defence Regulation 18B Detainees, 1941-1944, 1951-1952 & 1963*", listed by the National Archives but retained by the Home Office. The Home Office refused to confirm or deny whether it held this information and cited the exemption provided by section 23(5) (information relating to, or supplied by, bodies dealing with security matters) of the FOIA.
2. The Commissioner's decision is that the Home Office applied section 23(5) correctly and so it was not obliged to confirm or deny whether it held this information.

Request and response

3. The request was made on 16 April 2014 and was worded as follows:

"I wish to apply under the Freedom of Information Act to view part of the Home Office document:

HO 45/25743 Defence Regulation 18b detainees 1941-44 1951-52 1963.

I wish to view only the entry for the 1942 arrest of George William Gorman (died 1956)."

4. The response to this request was dated 15 May 2014. The Home Office refused the request and cited the exemptions provided by sections 23(1)

(information supplied by, or relating to security bodies) and 40(2) (personal information) of the FOIA.

5. The complainant responded on 17 May 2014 and requested an internal review. The Home Office responded on 30 July 2014 with the outcome of the review. It acknowledged that as the individual named in the request was not a living individual, section 40(2) had been cited incorrectly. However, it now stated that its position was that it neither confirmed nor denied whether the file specified in the request held information relating to the named individual. It cited the exemption from the duty to confirm or deny provided by section 23(5) of the FOIA.

Scope of the case

6. The complainant contacted the ICO initially on 6 August 2014 and indicated that he did not agree with the reasoning given by the Home Office for the refusal of his request. After an exchange with the ICO about the merit of his complaint, the complainant confirmed in writing on 26 August 2014 that he wished the Commissioner to issue a decision notice.

Reasons for decision

Section 23

7. The Home Office has cited the exemption provided by section 23(5) of the FOIA. This section provides an exemption from the duty to confirm or deny in relation to any information that, if it was held, would relate to, or have been supplied by, any of the bodies specified in section 23(3). This exemption does not refer to prejudice and is not qualified by the public interest. This means that if the information specified in the request would, if it was held, fall within the class specified in section 23(5), there is an absolute exemption from the duty to confirm or deny.
8. In an almost identical case¹ a senior representative of the Commissioner with the appropriate security clearance visited the Home Office and viewed the file specified in this request. In this way it was verified that

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http://ico.org.uk/~media/documents/decisionnotices/2013/fs_50474672.aspx

this file all relates to, and some of it was supplied by, one of the bodies specified in section 23(3). In that case the conclusion was that the file was exempt from disclosure under section 23(1).

9. Whilst the Commissioner can understand the complainant's view that confirmation or denial would be unlikely to result in harm given the age of the information, section 23(5) does not make any reference to harm. It was established in the previous case as a matter of fact that the specified file relates to or was supplied by a section 23(3) body or bodies. This means that the Home Office is not required to confirm or deny whether the individual named in the request is mentioned within this information or, therefore, whether the requested information is held.
10. The conclusion of the Commissioner is that section 23(5) of the FOIA is engaged and so the Home Office was not obliged to confirm or deny whether it held the information requested by the complainant.

Right of appeal

11. 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>

12. 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.
13. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**