

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2018

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

Decision (including any steps ordered)

1. The complainant requested information from the HM Passport Office, which is part of the Home Office, about its policy for issuing additional passports.
2. The Commissioner's decision is that the Home Office was entitled under the section 31(1) FOIA exemption (law enforcement) to withhold much of the guidance policy document "*Additional Passports and Frequent Traveller Exemptions*". However she also decided that, in the circumstances of this case, while the public interest favours maintaining the exemption for most of the requested information, it did not outweigh the public interest in disclosure of some of it.
3. The Commissioner requires the Home Office to take the following step to ensure compliance with the legislation:
 - disclose section 1 (Introduction) of the Home Office internal guidance policy document "*Additional Passports and Frequent Traveller Exemptions*".
4. The Home Office must take this step 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

5. On 30 November 2016, the complainant wrote to the Home Office (HO) and requested information in the following terms:

"Can you please send me a copy of your current policies on the issuing of concurrent passports to the same passport holder. (Aka "second passports".)

For clarity:

I have a copy of your policy manual index from 2011 which suggests this might be in your policy guide under "Additional Passports" or "Second passports". If so I would like a copy of those section(s), please.

I would also like copies of any "policy/procedure releases", "circulars" or other forms of policy update, which relate to this area of policy (and which have not been incorporated into the policy itself).

If there are other kinds of policies (perhaps the titles or organisation of these documents have changed) which relate to second, concurrent or additional passports, I would like those too."

6. HO responded on 2 February 2017. It stated that the information requested was held but was exempt from disclosure by virtue of the section 35(1) FOIA exemption (formulation of government policy). HO said that the balance of the public interest lay in maintaining the exemption and withholding the information. HO added that, whilst the current policy was under development, it would consider making the policy available when it had been completed.
7. Also on 2 February 2017, the complainant asked HO to conduct an internal review of its refusal. Despite reminders from the complainant and from the Commissioner, HO has still not conducted a review.

Scope of the case

8. The complainant contacted the Commissioner on 23 March 2017 and 22 May 2017 to complain about the way his request for information had been handled. He complained of the excessive delays by HO and of its failure to review its refusal of his request.
9. On 10 October 2017 the Commissioner decided to investigate the HO application of the section 35(1) FOIA exemption.

10. On 8 December 2017 HO told the Commissioner, in a much delayed response, that it continued to rely on the section 35(1)(a) FOIA exemption. HO said that it wished to rely additionally on the section 31(1)(a) and 31(1)(e) FOIA (law enforcement) exemptions.
11. On 14 December 2017 HO told the Commissioner that it no longer wished to rely on the section 35 FOIA exemption; accordingly she has not considered the application of that exemption.
12. HO did say, however, that it continued to rely on the 31(1)(a) and 31(1)(e) FOIA exemptions to continue to withhold most of the requested information. The Commissioner has considered the application of these exemptions, including the balance of the public interest. During the course of her investigation, her staff have reviewed the withheld information. HO ignored the Commissioner's request to tell the complainant about its new reliance on the section 31 FOIA exemption.

Reasons for decision

Section 31 – Law enforcement

13. Section 31(1)(a) and (e) FOIA states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under the Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime, ...

(e) the operation of the immigration controls".

14. In order to determine whether sections 31(1)(a) and 31(1)(e) FOIA are engaged the Commissioner needs to be satisfied that the prejudice that is specified in the exemption either would or would be likely to occur. If so, she then needs to consider whether the public interest lies in disclosing, or in withholding, the requested information.
15. Since section 31(1) FOIA is a prejudice based exemption if it is to apply the following criteria must be met:
 - the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the

information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- it is necessary to establish that the level of likelihood of prejudice being relied upon by the public authority is met – ie whether disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
16. HO confirmed that the withheld information consisted of a document entitled '*Additional Passports and Frequent Traveller Exemptions*'.
 17. The relevant applicable interests cited in this exemption are the prevention or detection of crime, and the operation of immigration controls. These are relevant to this information.
 18. When considering the second point the Commissioner must be satisfied that the nature of the prejudice is "*real, actual or of substance*" and not trivial or insignificant. She must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
 19. HO said that the exemptions at sections 31(1)(a) and 31(1)(e) FOIA were engaged for the information, because disclosure would prejudice the operation of immigration controls. HO said that it had a general principle of one passport per person, in order to protect UK borders. Additional concurrent passports were the exception, granted only in limited circumstances. HO said it had a policy on concurrent or 'additional' passports, but it had never been published. To publish it would provide anyone (including criminals) with insight into sensitive operational guidance that could lead to misuse, for example through the use of forged passports. This would prejudice the ability of HO's UK Border Force to carry out its duties to protect the UK from illegal immigration.
 20. HO said, and the Commissioner has seen, that the guidance gives quite detailed information on the circumstances in which an application for a further passport is appropriate. This would be of use to anyone contemplating passport forgery, as it would provide them with information about what types of application for an additional passport are likely to be granted.
 21. The Commissioner told the complainant that HO now relied on the section 31 FOIA exemption and offered him the opportunity to make representations to her on its application but he has not done so.

22. The Commissioner, in her own analysis has seen that the withheld information relates to the applicable interests of operating UK border controls effectively and preventing related criminal activity. She noted the potential for disclosure of parts of the withheld information to prejudice the operation of immigration controls and assist related criminal activity. She also accepted the HO evidence that disclosure of much of the information *would* provide insights into the operation of immigration controls that could lead to its misuse. Accordingly she decided that the exemption is engaged.
23. The section 31 FOIA exemption is a qualified exemption and the Commissioner has therefore considered the application of the public interest test to the withheld information.

The public interest in relation to section 31(1)(a) and (e) FOIA

24. HO told the Commissioner that, in favour of disclosure, is the general public interest in transparency and that disclosing information on its policy on applications for additional passports could enhance the openness of government and help the public understand in greater depth how HM Passport Office considers such requests. This would provide reassurance and increase public trust in, and engagement with, government.
25. The complainant has not commented to the Commissioner on the public interest balance in the context of the section 31 FOIA exemption. However he did tell HO, in the context of its initial section 35 FOIA refusal that he was not asking about the background to the policy or any information about the policymaking process. He said that he was asking simply for a copy of the current policy (including any recent updates). He added that the HO decision maker's public interest test consideration had been entirely formulaic. In his view, the reasons given by HO had simply been cut and pasted (with a minor edit), apparently from a generic text which tried to relate to all section 35 FOIA refusals. As a result he said that its "against disclosure" considerations were obviously inapplicable to his request.
26. HO told the Commissioner that the main consideration in favour of maintaining the exemption was that incurring the prejudice it had noted would be contrary to the public interest. The public interest in openness was double-edged, in that disclosing the information about additional passports carried a non-negligible risk that it could be misused. HO concluded that the balance of the public interest lay in maintaining the exemption.

27. The Commissioner noted the HO view that disclosure *would* cause the prejudice it had identified and she saw that as a significant factor in determining the balance of the public interest.
28. The Commissioner's staff reviewed the withheld information and she has considered the case made by HO in arriving at the public interest balance. She considered that there is a public interest in members of the public being aware in general terms of the HO approach to the issuing of additional passports in those very limited circumstances in which it is appropriate. She noted, however, that the prejudice identified, which would follow on from disclosure of the detail, would assist those wishing to engage in the forging of passports or evading immigration controls. She accepted the HO evidence that this would prejudice the ability of the UK Border Force to carry out effectively its duty to keep the UK safe and protect it from illegal immigration activity. Accordingly, she decided that the public interest lay in maintaining the exemption for the bulk of the withheld information but with one exception.
29. The Commissioner did, however, see that section 1 of the withheld document, the introduction, gave an overview in very general terms of when an application for a concurrent passport might be appropriate. She considered that it would be in the public interest for this information to be available to members of the public who might wish to know if their circumstances made it appropriate to apply for an additional passport and for which it would not be in the public interest to maintain the exemption. She concluded that in the circumstances of this case the public interest in maintaining the exemption does not outweigh the public interest in disclosure of some of the requested information ie section 1. She put her finding to HO who did not dissent from it. She therefore decided that section 1 (only) of the document should be disclosed but not the remainder of it.

Procedural issues

30. The complainant submitted his request on 30 November 2016. HO sent a holding response on 4 January 2017 and then responded substantively on 2 February 2017, citing an exemption. Also on 2 February 2017 he requested an internal review which has not yet been completed.

Section 10 – Time for compliance

31. Section 10(1) FOIA requires a public authority to respond to an information request promptly and in any event no later than 20 working days after the date of receipt. The Commissioner considers that HO has breached section 10(1) FOIA.

Section 17 – refusal of a request

32. Section 17(1) FOIA states that, if a public authority wishes to refuse any part of a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemptions. The Commissioner considers that HO has breached section 17(1) as it took longer than 20 working days to respond substantively to the complainant, citing the relevant exemptions.

Other matters

33. The complainant requested an internal review on 2 February 2017. At the date of this notice, HO had still not provided a review.
34. Part VI of the section 45 Code of Practice (the code) says that it is good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
35. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt 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.
36. The Commissioner is concerned that, the complainant having not been made aware of any exceptional circumstances, it has taken far in excess of 20 working days for HO to complete the internal review.

Right of appeal

37. 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

38. 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.
39. 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

Deborah Clark
Group Manager (Temporary)
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF