

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2018

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

Decision (including any steps ordered)

1. The complainant requested information relating to the citizenship of the former Prime Minister of Australia. The Home Office refused to confirm or deny whether it held this information and cited the exemption provided by section 40(5) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 40(5) correctly and so it was not obliged to comply with the complainant's request.

Request and response

3. On 5 July 2017 the complainant wrote to the Home Office and requested information in the following terms:

"In August 2013 I commenced the freedom of information request that was given your reference FOI 28788.

That request was refused on 5 September 2013.

I now renew that request, seeking an update."

4. The August 2013 information request that the complainant references in the request above was as follows:

"I should be grateful if you would confirm that the citizenship of Julia Gillard and Tony Abbott remains unchanged and that neither has renounced citizenship since the date of the last message."

5. The previous message referenced in the August 2013 request was as follows:

"Do your records show that either of the following Australian citizens has renounced his/her British nationality?"

Julia Eileen Gillard

Anthony John Abbott".

6. The Home Office responded on 13 July 2017 and refused to confirm or deny whether it held the requested information. It cited section 40(2), although it was evident that it intended to cite section 40(5) (personal information).
7. The complainant responded on 14 July 2017 and requested an internal review. The Home Office responded with the outcome of the review on 22 August 2017, which was that the refusal to confirm or deny whether the requested information was held was upheld in relation to Julia Gillard, but in light of another disclosure was not upheld in relation to Tony Abbott. The Home Office confirmed at this stage that it relied on section 40(5).

Scope of the case

8. The complainant contacted the Commissioner on 28 August 2017 to complain about the refusal of his information request. The complainant advanced reasoning relating to the controversy over the citizenship status of some Australian politicians and argued that section 40(5) had been cited incorrectly in response to his information request.
9. The complainant originally specified two other individuals in his information requests, but in correspondence to the ICO of 7 December 2017 he dropped his request for information relating to those two individuals. Those aspects of his request are not covered in this notice.
10. The position of the Home Office changed at internal review, at which point it withdrew reliance on section 40(5) of the FOIA in relation to Tony Abbott. This means that the scope of this notice covers only the request for information about Julia Gillard.

Reasons for decision

Section 40(5)

11. Section 1(1)(a) of the FOIA imposes a duty on public authorities to confirm or deny whether requested information is held. Section 40(5) provides an exemption from that duty where confirmation or denial would involve disclosure of personal data and where that disclosure would be in breach of any of the data protection principles.
12. Consideration of this exemption involves two stages. First, confirmation or denial in response to the request must involve a disclosure of personal data and, secondly, that disclosure must be in breach of at least one of the data protection principles.
13. Covering first whether confirmation or denial in response to the complainant's request would involve a disclosure of personal data, the definition of personal data is given in section 1(1) of the DPA:

"personal data' means data which relates 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".*
14. In this case the Commissioner considers it clear that confirmation or denial in response to the request would disclose personal data about Ms Gillard, the person named in the request. It would disclose whether or not the Home Office held information about whether Ms Gillard held British citizenship and about whether any such citizenship had been renounced. That information would clearly relate to Ms Gillard and she is identified in the wording of the request. The information would, therefore, constitute personal data according to the definition given in section 1(1) of the DPA.
15. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully. In particular, the focus here is on whether disclosure would be, in general, fair to the data subject.
16. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subject and what

consequences disclosure may have. She has also considered what legitimate public interest there may be in disclosure of the information in question.

17. Covering first the reasonable expectations of the data subject, the status of the person named in the request is relevant here; Ms Gillard was the Prime Minister of Australia. That she held a position of such seniority and high profile is relevant to the question of what reasonable expectation of privacy she could hold. The complainant would argue that her previous position, and the relevance that the issue of her citizenship status had to that position, means that it would not be reasonable for her to hold an expectation of privacy in relation to the requested information.
18. The issue of the citizenship of Australian politicians has been a matter of interest and controversy. There have been cases where members of the Australian Parliament have resigned their position upon establishing that they hold citizenship of another country as well as Australia, which means that they are disqualified from their office under the Australian constitution. There have been calls for other Australian politicians to publicly disclose their citizenship status.
19. The Home Office has stated that its usual position is to not comment on the nationality status of any individual and it maintains that it should not do so in this case. It argues that Ms Gillard would hold a reasonable expectation that it would follow its normal approach and not disclose her personal data.
20. The view of the Commissioner is that *all* individuals are entitled to a level of privacy, whatever their status. She has taken this approach in relation to, for example, requests for personal data relating to members of the Royal Family, and in this case her view is that Ms Gillard would have had a right to privacy even whilst she occupied high office, which she had not for some years by the date of the request.
21. As to what the background referred to above means for reasonable expectation in relation to the information in question here, the Home Office argued that the correct route to resolve any questions relating to Ms Gillard's eligibility for office would be the Australian judicial system. The Commissioner agrees; she is not of the view that the context means that Ms Gillard could not hold a reasonable expectation of privacy. The view of the Commissioner is, therefore, that Ms Gillard could reasonably expect the Home Office to take its normal approach and not comment on her citizenship status.
22. Turning to the consequences of confirmation or denial on the data subject, as mentioned above the view of the Commissioner is that the

correct forum for resolving any legitimate question about Ms Gillard's eligibility for her former office is through the appropriate national channels and she has not taken into account on this point the questions that have been raised about eligibility. Instead her focus is on what the loss of privacy may mean for the data subject personally.

23. The Commissioner has already mentioned that her view is that all individuals regardless of status have a right to and legitimate expectation of privacy. The Commissioner's view is also that disclosure of the confirmation or denial in contravention of the reasonable expectation of the data subject would be likely to be distressing to that individual, and that their distress would not be mitigated by the seniority of their former office.
24. Turning to whether there is any legitimate public interest in the confirmation or denial, whilst section 40(5) is not a qualified exemption in the same way as some of the other exemptions in Part II of the FOIA, an element of public interest is necessary in order for disclosure to comply with the first data protection principle. The question here is whether any legitimate public interest that does exist outweighs the factors against disclosure covered above.
25. The complainant would argue on this point that there is a strong public interest in disclosure owing to the issues that have been raised about Ms Gillard's citizenship status. The Commissioner recognises that this is a matter of public interest, but again would note that it is an issue that should be settled through the appropriate Australian channels, including the question of whether information on this matter should be made public. Her view is that there is not, therefore, legitimate public interest in the disclosure of this information on the basis of that issue.
26. The Commissioner's view is also that there is little other legitimate public interest in the disclosure of information relating to the citizenship of one individual, whatever their status. She does not, therefore, believe there to be any legitimate public interest in disclosure of this information that would outweigh the factors against disclosure covered above. Her finding is, therefore, that disclosure of the confirmation or denial would be unfair and in breach of the first data protection principle.
27. The Commissioner has found that confirmation or denial in response to the complainant's request would involve the disclosure of the personal data of a third party and that this disclosure would be unfair and in breach of the first data protection principle. Her conclusion is, therefore, that the exemption provided by section 40(5) of the FOIA is engaged and so the Home Office was not obliged to confirm or deny whether the information requested by the complainant was held.

Right of appeal

28. 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>

29. 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.
30. 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

Ben Tomes
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