

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2019

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

Decision (including any steps ordered)

1. The complainant has requested numbers of citizenship deprivation orders for a two year period from the Home Office ("HO"). The HO refused to provide this citing the exemptions at sections 23(1) (information supplied by, or relating to, security bodies) and section 24(1) (national security) in the alternative. At internal review stage it added reliance on section 36(2)(c) (prejudice to effective conduct of public affairs) in respect of part (2) of the request. It subsequently withdrew reliance in section 36(2)(c), but added reliance on sections 27(1)(a)(c) and (d) (international relations).
2. The Commissioner is satisfied that the that the withheld information is exempt from disclosure on the basis of section 23(1) or, in the alternative, section 24(1) of the FOIA. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

3. On 2 April 2019 the complainant wrote to the HO and requested information in the following terms:

"1) How many citizenship deprivation orders, under Section 40 (2) of The British Nationality Act 1981, were made to individuals assessed to be dual British-Pakistani nationals in 2017?"

2) How many citizenship deprivation orders, under Section 40 (2) of The British Nationality Act 1981, were made to individuals assessed to be dual British-Pakistani nationals in 2018?"

4. The HO responded on 24 April 2019. It refused to provide the requested information. It cited the following exemptions of the FOIA as its basis for doing so: 23(1) (information supplied by or relating to security bodies) and, in the alternative, section 24(1) (national security)¹.
5. Following an internal review the HO wrote to the complainant on 17 May 2019. It revised its position, adding reliance on section 36(2)(c) (prejudice to effective conduct of public affairs) to part (2) of the request.
6. On 4 November 2019, in responding to the Commissioner's enquiries, the HO advised that it no longer wished to rely on section 36. However, it instead introduced reliance on section 27(1)(a), (c) and (d) (international relations).

Scope of the case

7. The complainant contacted the Commissioner on 28 May 2019 to complain about the way his request for information had been handled. He disagreed with the application of the exemptions cited. He advised her as follows:

"The government themselves publish each year data on the number of citizenship deprivation orders, so that clearly is not regarded as a breach of national security.

Similarly, when citizenship deprivation appeals are heard in the Special Immigration Appeals Commission, the alleged dual nationality of an individual is not considered part of the 'closed' material (i.e. highly sensitive material that is not made public which often forms crucial parts of the cases). This means that on the SIAC's own website there are cases summaries of appeals by individuals assessed to be dual British Pakistani nationals, i.e. it is a

¹ Citing these two exemptions 'in the alternative' means that although only one exemption is engaged the other one is also cited so as to disguise which exemption is in fact being relied upon. This approach may be necessary in instances where citing one exemption would in itself be harmful. Further information on this issue is contained on page 9 of the following guidance issued by the Commissioner: https://ico.org.uk/media/fororganisations/documents/1196/how_sections_23_and_24_interact_foi.pdf

matter of public record that a number of British Pakistani individuals have been deprived of their citizenship.

Therefore I find it inconceivable that it can endanger national security to simply put a figure on the number of British Pakistani individuals deprived of their citizenship, when the overall number of cases is published by the government, and the fact British Pakistanis form some portion of those cases is already made public by the court in charge of hearing appeals relating to them!

This is a matter of extreme public interest, because Pakistani citizenship law has one of the most expansive notions of citizenship in the world. An individual is assessed to be a Pakistani citizen just for having a parent of Pakistani nationality.

That makes individuals of British Pakistani heritage particularly vulnerable to citizenship deprivation (as someone can only be deprived of their citizenship if they won't be made stateless)

Obtaining the figure of the number of British Pakistanis affected is therefore crucial in allowing the public to understand whether this significant community is being disproportionately affected by citizenship deprivation powers.

The ability to deprive an individual of their British citizenship, even if that individual was born in the UK and has never actively pursued a second nationality (as can happen to Britons with a Pakistani national parent), is extremely controversial and deserves to be thoroughly scrutinised by the public with the full facts at their disposal".

8. The Commissioner will consider the exemptions applied below. She has viewed the withheld information.

Reasons for decision

Section 23 – information supplied by, or relating to, bodies dealing with security matters

Section 24 – national security

9. Section 23(1) of FOIA provides an exemption which states that:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)".

10. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3)².

11. Section 24(1) states that:

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security".

12. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- 'national security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK; and,
- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

13. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.

14. As is clear from the wording of section 24(1), the exemptions provided by sections 23(1) and 24(1) are mutually exclusive. This means they cannot be applied to the same request.

² <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

15. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue. To overcome this problem, as referred to above at footnote 1, the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.
16. As the Commissioner's guidance on this issue explains, a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.
17. Based on submissions provided to her by the HO during the course of her investigation, the Commissioner is satisfied that the withheld information either falls within the scope of the exemption provided by section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1) then the public interest favours maintaining the exemption.
18. The Commissioner cannot elaborate on her rationale behind this finding without compromising the content of the withheld information itself or by revealing which of these two exemptions is actually engaged.

Other matters

19. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Information Notice

20. As the HO failed to respond to the Commissioner's enquiries in a timely manner it was necessary for her to issue an Information Notice in this case, formally requiring a response.
21. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal

in her draft Openness by Design strategy³ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy⁴.

³ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁴ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

22. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Gerrard Tracey
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