

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 22 January 2007

Public Authority: The Home Office
Address: Immigration and Nationality Directorate
Apollo
36 Wellesley Road
Croydon CR9 3RR

Summary

The complainant requested disclosure of records relating to the decision by the Home Office to grant a named third party indefinite leave to remain in the UK. The Home Office withheld the information placing reliance upon the exemption under section 40 Freedom of Information Act 2000. Having considered the correspondence passing between the parties and their submissions to the Commissioner, his decision is that the Home Office has dealt with the complainant's request in accordance with Part I of the Act, save that it has exceeded the time limit for providing a refusal notice contrary to section 17 of the Act.

The Commissioner's Role

- 1 The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 1 February 2005 the complainant wrote to the Home Office requesting information. The relevant requests are contained in the following three extracts:

"Please could you let me know in writing and in the next 20 working days if you hold information on the decision to allow (the identified third party) indefinite leave to remain in the United Kingdom...."

"If you do hold such information I wish to have a copy or to have the opportunity to inspect the record. I would like to have access to the full history of his applications for refugee status in the UK..."

“If you are of the view that there may be further information of the kind requested but it is held by another public authority please let me know as soon as possible.”

3. On 11 March 2005 the Home Office acknowledged the request and the complainant responded by email on 14 March 2005 pointing out that the Act requires that requests for information are responded to within 20 working days.
4. On 14 April 2005 the Home Office served a refusal notice in which reliance was placed upon the exemption under section 40(3) of the Act on the grounds that disclosure of the information relating to the named third party would breach the data protection principles.
5. On 30 May 2005 the complainant wrote to the Home Office requesting a review of its decision.
6. On 24 June 2005 the Home Office replied to the complainant, maintaining that the exemption under section 40 of the Act applied.
7. The Home Office again argued that the fairness aspect of the first data protection principle would be breached by disclosure, given that Home Office Immigration and Nationality Department applicants were not informed that their personal data would be disclosed and that none of the additional conditions in schedules 2 or 3 of the Data Protection Act 1998 (“DPA”) were satisfied.
8. The Home Office also argued that individual applicants to the Home Office Immigration and Nationality Department are not informed that their personal information may be disclosed in response to requests for information under the Act and that to do so would therefore amount to ‘incompatible processing’ in breach of the second data protection principle.

The Investigation

9. On 27 June 2005, the complainant contacted the Commissioner to complain about the way his request for information had been handled, stating that he wished to appeal against the Home Office Immigration and Nationality Directorate’s decision to refuse his request *“for documents and information relating to the decision to grant indefinite leave to remain in the UK”* to (the named individual).
10. On 31 January 2006 the Commissioner wrote to the Home Office seeking further explanation on its use of the exemption in section 40. The Home Office provided its response on 28 February 2006. Further enquiries were made in relation to the information withheld, the individual’s immigration history and the basis of the public authority’s decision to withhold the information and the replies to those requests have been taken into consideration by the Commissioner in

reaching his decision. The Home Office has affirmed its position that that all information falling within the terms of the request is personal information and therefore that it would not be possible to disclose some parts of the requested information after redaction of other parts.

11. The Commissioner considered the correspondence passing between the parties, the terms of the complaint and a letter received from the complainant dated 2 November 2005 in which he argued that public comments made by former Home Secretary the Rt Hon. Mr Charles Clarke MP, former Home Office Minister the Rt Hon. Mrs Hazel Blears MP and by the Deputy Prime Minister the Rt Hon. Mr John Prescott MP concerning (the named individual) meant that there was an *'exceptionally strong case for disclosure of the information.'*

Analysis

Procedural matters

12. In reaching his decision in this case, the Commissioner has initially considered how the public authority dealt with the complainant's information request.
13. Section 17(1) provides that where the authority is relying on an exemption relating to the duty to confirm or deny and relevant to the applicant's request, it must issue a refusal notice within 20 working days, specifying the exemption and how it applies.
14. The complainant initially requested for information by email on 1 February 2005. Despite the correspondence between both parties on 14 March 2005, the public authority did not set out details of the exemption that it was relying on until 14 April 2005. This was more than 20 working days after the initial request was made.
15. Consequently, it is the Commissioner's view that the public authority has breached section 17 (1) of the Act.

Exemption

16. Personal data relating to a third party will be considered exempt from disclosure under the Act where either of the conditions referred to in section 40(3) or section 40(4) is satisfied.
17. The condition in Section 40(3) is satisfied where disclosure of the information requested would result in breaches of any of the data protection principles set out in Schedule 1 Part I of the DPA.

The first data protection principle

18. The first data protection principle requires that personal data shall be processed fairly and lawfully, and that at least one of the conditions in

Schedule 2 of the DPA is met and additionally in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

19. In considering whether it would be fair to disclose information held, the Commissioner has had regard to the means by which the information was obtained, likely expectations of the data subject and the effect that disclosure would have upon the data subject or others.
20. The Commissioner has been advised by the Home Office that any information of the type requested would have been gathered as a part of a confidential process, that the data subject would have had no expectation that any such information would be released to the public domain and that disclosure of such information could potentially cause 'unwarranted public scrutiny' not only to the individual concerned but to other parties also. The Commissioner accordingly considers that it would be unfair to release the information requested.
21. With reference to the complainant's argument that reported public statements of various government Ministers lends weight to the case for disclosure, the Commissioner does not accept that any public expression of fact or opinion in relation to the data subject whether made by a Minister or other third party would render the disclosure fair.
22. The Commissioner considers in any event that none of the requisite conditions under DPA Schedule 2 are met. The conditions under schedule 2 are set out in full in the annex to this decision notice. The Commissioner also considers that disclosure could potentially be unfair to any third party who might be identified from the information. Given that none of the conditions under schedule 2 are met, the Commissioner does not need to consider whether the information requested would also of its nature relate to "sensitive personal data" for which the additional requirements of schedule 3 would also have to be satisfied.
23. In the particular circumstances of this complaint, the Commissioner finds that to disclose the withheld information would breach the first data protection principle and accordingly finds that the first condition referred to in section 40(2) (b) (as set out under section 40(3)(a) (i)) is satisfied and the exemption is engaged.
24. The complainant has argued that it would be in the public interest to release the information requested; however the above exemption is absolute and accordingly the public interest does not fall to be considered. In all the circumstances the Commissioner upholds the decision of the public authority to withhold the information requested.
25. The Commissioner considers that the terms of the request and complaint specifically relate to personal information in relation to the named individual and as such, accepts that the Home Office would not be able to redact some parts of the information relating to the decision to grant indefinite leave to the named individual, and to disclose the other part that has not been redacted.
26. The Commissioner notes that the complainant's initial request that "if the (Home Office) was of the view," that further information relating to the

immigration history of the individual concerned was held by another public authority that he should be advised of this. The Home Office failed to respond substantively to this part of the request. Although this omission does not form part of the complaint, the Home Office has subsequently advised the Commissioner that it is considered unlikely that any information relevant to the request would be held by any other public authority.

27. The Commissioner notes in any event that pursuant to sections 1 to 3B of the Immigration Act 1971 (as amended by sections 1 and 2 of the Immigration and Asylum Act 1999), authority to decide in relation to the 'giving refusing or varying' of leave to remain in the UK is vested solely in the Secretary of State for the Home Department.
28. The Commissioner also considers that the information requested may also be exempt from disclosure under section 31(1)(e) of the Act in that it would constitute information which is not exempt by virtue of section 30 of the Act, the disclosure of which would be likely to prejudice the operation of immigration controls because the Home Office Immigration and Nationality Department depend to a large extent on the provision of information from individual applicants who might be deterred from doing so if they could not be confident that the information that they provide would not be disclosed to any third party.
29. The Commissioner is satisfied that the requested information in respect of any "decision to grant indefinite leave to remain in the UK" to the named individual does constitute unstructured manual personal data within the meaning of the DPA and section 40 of the Act.

The Decision

30. The Commissioner's decision is that the public authority has dealt with the request in accordance with section 40 of the Act.
31. However, the Commissioner has also decided that in failing to provide a refusal notice within 20 working days of the complainant's initial request, the public authority has failed to comply with section 17 of the Act.

Steps Required

32. The Commissioner requires no steps to be taken.

Right of Appeal

33. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 22 day of January 2006

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 17

Section 17(1) provides that -

A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 40 provides-

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act

(data subject's right of access to personal data).

The Data Protection Act 1998

The first data protection principle provides:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.