

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 November 2011

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

#### Decision (including any steps ordered)

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1. The complainant requested information about whether the president of Syria has been granted UK citizenship. The Home Office refused to confirm or deny whether it held any information covered by the request, citing the personal information exemption provided by section 40(5) of the Freedom of Information Act 2000 ('the Act').
2. The Information Commissioner's decision is that the Home Office acted correctly in applying this exemption and that it is not required to confirm or deny whether it holds the requested information.

#### Request and response

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3. On 22 March 2011 the complainant wrote to the Home Office and requested information in the following terms:

*" 1) Has the president of the Syrian Arab Republic, Basar Al-Assad, been granted UK citizenship?"*

*2) If yes, when and where?"*

*3) Did he go through all the normal procedures for acquiring UK citizenship (Britishness test, citizenship ceremony etc)?"*

4. The Home Office responded on 7 April 2011. It refused to confirm or deny whether it held information covered by the request, citing the exemption in respect of personal information at section 40(5) of the Act. It argued that the act of confirming or denying whether it held the

requested information would constitute a disclosure of information that would contravene one of the data protection principles of the Data Protection Act 1998 ('the DPA').

5. Following an internal review the Home Office wrote to the complainant on 11 May 2011, upholding its decision.

### **Scope of the case**

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6. On 17 May 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He commented that it was in the public interest that the information he requested be disclosed.
7. The Information Commissioner has considered whether the Home Office acted correctly in citing section 40(5) and refusing to confirm or deny whether it held the requested information. He has done so without having knowledge of whether or not the Home Office actually holds the information.

### **Reasons for decision**

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8. Section 40 of the Act provides that personal data about third parties should not be disclosed to those making freedom of information requests if to do so would breach the data protection principles.
9. In certain cases, merely confirming or denying that requested information is held (a requirement of section 1(1)(a) of the Act) can itself reveal information which breaches the principles.
10. In such cases, section 40(5)(b)(i) of the Act allows that a public authority is not obliged to confirm or deny that information is held, where confirming or denying would breach any of the data protection principles of the DPA. It is only necessary to show that either confirmation or denial would engage the exemption from section 1(1)(a), and not both.
11. The Home Office argued that confirming or denying that it held information covered by the request would involve a disclosure of personal data about Mr Al-Assad. It argued that such a disclosure would be unfair to him and would breach the first data protection principle of the DPA. The Information Commissioner has examined these arguments carefully.

### **What personal data would be disclosed?**

12. The Information Commissioner considers that the personal data which would be disclosed by confirming or denying would be whether or not Mr Al-Assad has made an application for UK citizenship. If the appropriate response to the question, *"Has the president of the Syrian Arab Republic...been granted UK citizenship?"* would be for the Home Office to confirm that it holds information of the description specified in the request, it would be reasonable to infer that an application for citizenship had been received from Mr Al-Assad.
13. The Information Commissioner considers that whether or not a named individual has made an application for UK citizenship is information which falls under the DPA's definition of personal data. Therefore, confirmation in this case would constitute a disclosure of Mr Al-Assad's personal data.

### **First data protection principle**

14. Having established that the information which would be disclosed by confirming or denying constitutes personal data, the Information Commissioner has examined whether the disclosure would comply with the first data protection principle's requirement that it be fair to the data subject.
15. The Home Office argued that the disclosure would be unfair to Mr Al-Assad. It stated that it is not its practice to release information about whether any person has made an application for citizenship and that confirming or denying would effectively do precisely this.
16. It argued that any person who may be entitled to apply for citizenship should be entitled to consider whether or not to make the application on the assumption that any information relating to their application will remain confidential. It does not consider that there is any reason to depart from this approach in relation to this request.
17. The complainant argued that the particular circumstances of the individual in question warrant the disclosure of the information. Specifically, he argued that the disclosure would not be unfair to the data subject because his position as Syrian head of state should render him liable to a greater level of scrutiny. He also argued that it would not be in the public interest to grant him citizenship and so the need for this information to be publically scrutinised outweighs obligations of fairness to the data subject.
18. In deciding what is 'fair', the Information Commissioner balances the possible consequences to the data subject of any disclosure along with his reasonable expectations of how his personal data will be used or

disclosed, against the more general principles of the legislation under which the request was made as well as any legitimate interests which arise in the specific circumstances of the case.

**What are the consequences to the data subject of the disclosure that would occur as a result of confirming or denying?**

19. The complainant argued that the disclosure would be unlikely to result in substantial damage or distress to the data subject. The Information Commissioner disagrees, considering that, given his specific circumstances and the political and social climate into which the information would be disclosed (the request was made at a time when an uprising in Syria was gaining momentum), the disclosure would have substantial consequences for data subject. Disclosure under the Act is taken to be disclosure to the world at large. Confirmation that the data subject had made an application for citizenship could have a significant impact on his personal position and possibly his security and safety. Denial that any such application had been received could also, of itself, generate speculation and rumour which could have significant consequences.

**Reasonable expectations**

20. The Home Office has stated that it is not its practice to disclose information about prospective applicants for citizenship and that such people should have the right to expect that any such information about them will be held in confidence.
21. While the Information Commissioner accepts that information about whether or not someone has submitted an application for citizenship is not sensitive personal data as defined under section 2 of the DPA, he nevertheless considers it to be of a quality and provided in circumstances which most people would consider to be confidential. He therefore considers that it would be reasonable for applicants to expect that such information would not be disclosed except in very specific circumstances.
22. The complainant argued that Mr Al-Assad's position as a public figure and a head of state should render information about him liable to a greater level of public scrutiny.
23. Although a public figure, it is not the case that Mr Al-Assad should be subject to the same type of scrutiny as a senior British civil servant or Minister, as he is not responsible for making financial or policy decisions funded by UK taxpayers. However the Commissioner accepts that as an international public figure it is reasonable for Mr Al-Assad to expect a

certain level of legitimate interest, from UK citizens, in his background and his actions.

24. Furthermore, while it is the case that certain senior public figures should expect that their public actions will be subject to greater scrutiny this does not necessarily extend to information about their private lives. It is accepted that every individual has the right to some degree of privacy and this right is so important that it is enshrined in Article 8 of the European Convention on Human Rights, which protects the right to a private and family life.
25. The Information Commissioner considers that whilst information about an application for citizenship could have a bearing on the data subject's public duties in his own country, in this context it is best characterised as information about him in a private capacity. As such, it is entitled to a greater degree of protection.

### **Balancing the rights and freedoms of the data subject with legitimate interests**

26. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
27. The complainant argued that it is in the public interest to know whether Mr Al-Assad, a foreign head of state, has been granted UK citizenship. The Information Commissioner considers that disclosure of such information may benefit transparency and accountability, in that it would allow the public to determine whether citizenship applications are being dealt with equitably and consistently.
28. The Information Commissioner also acknowledges that at the time of the request (and subsequently) the UK government had serious concerns about Syria's violation of freedom of expression and association, and other civil and political rights. The Foreign and Commonwealth Office identified Syria as one of 26 countries where it has wide-ranging concerns about human rights violations. Its *"Human Rights and Democracy: the 2010 Foreign and Commonwealth Office report"*, published in March 2011, included an overview of current human rights violations in Syria<sup>1</sup>, and commented that the situation looks set to

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<sup>1</sup> <http://ukinsyria.fco.gov.uk/en/about-us/working-with-syria/human-rights-in-syria/>

deteriorate further during 2011. At the time of the request, the most serious and widespread civil unrest to take place in decades was starting to gain momentum in Syria and was being met with violent resistance by the Syrian security services.

29. Against this background, the Information Commissioner accepts that it would be in the public interest to know whether the head of this regime has been granted citizenship in the UK.
30. Whilst he accepts these arguments carry considerable weight he does not consider that they are strong enough to justify the serious consequences to the data subject if the information were to be disclosed, or overriding his reasonable expectations of privacy.
31. Having considered the issue of fairness, the Information Commissioner has therefore determined that confirming or denying whether the information the complainant requested was held would result in the disclosure of personal data which would be unfair to the data subject, and would therefore breach the first data protection principle.

#### **Schedule 2 Condition 6**

32. In addition to the finding on fairness above the Commissioner also finds that the conditions for processing set out in schedule 2 of the DPA would not be satisfied.
33. He considers the only schedule 2 condition which might apply in respect of the processing to be condition 6:

*"The processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."*

34. There is a significant overlap between the balancing approach required under the consideration of fairness, outlined at paragraphs 28 - 32 of this decision notice, and the three-stage test set out in Schedule 2, condition 6.
  35. He considers that that while the processing was necessary for the legitimate interests pursued by the public, the processing would have
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been unwarranted by reason of prejudice to the rights and freedoms of the data subject.

36. He therefore finds that the Home Office was correct to neither confirm nor deny whether it held information covered by the request, by virtue of the provisions of section 40(5)(b)(i).

## Right of appeal

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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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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** .....

**Steve Wood**  
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