

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 January 2014

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested, from the Home Office, information about the citizenship of a third party.
2. The Commissioner's decision is that the Home Office correctly relied on section 40(5)(b)(i) to neither confirm or deny it held the requested information.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

#### **Request and response**

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4. On 21 August 2013, the complainant wrote to the Home Office and requested information in the following terms:
  - Has Chaudhry Mohammad Sarwar relinquished his UK nationality? If so where, when and on what date?
5. In his letter, the complainant explained that as a British citizen his enquiry was about the former British MP Chaudhry Muhammad Sarwar of Glasgow. The complainant sought to determine if Mr Sarwar had surrendered his British nationality or had he submitted his application regarding the matter to the United Kingdom Border Agency.

6. The Home Office's response (letter to the complainant dated 29 August 2013) to the request for information was that it would neither confirm nor deny whether it held it. In doing so it relied on section 40(5) of the Act. The complainant, in a letter dated 30 August 2013, asked the Home Office to review its decision
7. The outcome of the Home Office's internal appeal was that it had correctly cited section 40(5) of the Act but that it should have also stated that the subsection relied upon was section 40(5)(b). This appeal decision was communicated to the complainant by way of a letter dated 16 September 2013.
8. Therefore the Home Office's final position, as expressed to the complainant on 16 September 2013, was that it would neither confirm or deny that it held the requested information and relied on section 40(5)(b) to do so.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 17 September 2013 to complain about the way his request for information had been handled. He explained that he just needed to know if the former British MP had given up his British nationality. In particular where, when and on what date. The complainant stated that Mr Sarwar is a public figure who had announced that he had "given up" his United Kingdom citizenship to the "public" who had the right to know about their leaders.
10. The complainant stated that Mr Sarwar is, crucially, the Governor of Punjab Province in Pakistan, who had shown a letter in public and had said that the letter had come from United Kingdom's Home Office confirming he had surrendered his United Kingdom's citizenship and that he was now only a Pakistani national.
11. The complainant also stated that although Mr Sarwar is serving in Pakistan he is still a public figure and that surely the public in Pakistan, as well as in the United Kingdom, want to know whether his statement is true or not.
12. The Commissioner has taken cognisance of the submissions the complainant has made and are addressed below.

## Reasons for decision

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13. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:

- the duty to inform the applicant whether or not requested information is held and, if so,
- the duty to communicate that information to the applicant.

14. Section 40(5) states that:

“The duty to confirm or deny

(b) Does not arise in relation to other information if or to the extent that either –

(i) The giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded,”

15. Therefore, for the Home Office to be correct in relying on section 40(5)(b)(i) to neither confirm nor deny whether it holds information falling within the scope of the complainant’s request the following conditions must be met:

- Confirming or denying whether information is held would reveal personal data of a third party; and
- That to confirm or deny whether information is held would contravene one of the data protection principles.

16. Section 1(1) of the Data Protection Act 1998 (“DPA”) defines personal data as: ‘data which relate 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, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual’.

17. The Commissioner’s view is that providing confirmation as to whether the requested information is held would constitute the disclosure of personal data. The request is for information about whether Mr Sarwar

("the data subject") has renounced his British citizenship or applied to do the same.

**Would confirming or denying that the requested information is held breach a data protection principle?**

18. The first data protection principle says that personal data should be processed fairly and lawfully, subject to further conditions for processing set out in the DPA.
19. In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner considers the following factors:
  - The data subject's reasonable expectations of what would happen to their personal data.
  - The consequences of disclosure.
  - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
20. There is nothing to suggest that the data subject has consented to the Home Office disclosing Mr Sarwar's personal data (i.e. whether he has renounced his British citizenship or applied to it to do so) to the public. However, non-expression of consent is not solely determinative as to whether a data subject's personal data will be disclosed. It is one, albeit very weighty, factor that has to be weighed against factors which focus on the legitimate interests in releasing the information.
21. The Commissioner is also of the view that, even when taking into account the actions of Mr Sarwar referred to by the complainant, there is nothing to suggest that Mr Sarwar would have a reasonable expectation that the Home Office would disclose the requested information into the public domain.
22. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the data subject concerned. However, although they may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
23. Regarding the above, the Commissioner takes cognisance that the data subject is pursuing a political career overseas and apparently has dispensed with an active public role in the United Kingdom. Accordingly the intrusion into his privacy is not particularly mitigated by his (such that it is) public role in the United Kingdom.

24. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the data subjects concerned. The Commissioner therefore next considered whether there is a legitimate interest in confirming whether the requested information is held.
25. As stated above the data subject is not pursuing an active public role in the United Kingdom. Accordingly the Commissioner's view is that even though Mr Sarwar may be pursuing a public role in Pakistan, there is not a significant public interest in knowing the data subject's citizenship status, such as to justify an intrusion by the Home Office into his private affairs in this respect.
26. Due to the matters considered above and in all of the circumstances of this case the Commissioner is satisfied that it would be unfair to confirm or deny whether the requested information is held. To do so would disclose information about the data subject which would represent an unwarranted infringement by the Home Office on his privacy. The absolute exemption provided by section 40(5)(b)(i) is therefore engaged and the Home Office is not required to confirm or deny whether it holds the information.

## Right of appeal

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27. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**