

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2016

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

Decision (including any steps ordered)

1. The complainant requested information relating to whether a named high profile individual held a British passport. 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, so it was not obliged to confirm or deny whether the requested information was held.

Request and response

3. On 19 November 2015 the complainant wrote to the Home Office and requested information in the following terms:

"1. Kindly inform that Mr Rahul Gandhi [address redacted], is holding british passport. Is he a British Citizen. Did this person ever had british passport.

2. Kindly inform that Mr Rahul Gandhi [address redacted] is holding british passport. Is he a British Citizen. Did this person ever had british passport.

3. If yes which year did he accrued the british passport, british citizenship."

4. The Home Office responded on 15 December 2015. It refused to confirm or deny whether the requested information was held and cited the exemption provided by section 40(5) (personal information) of the FOIA.
5. The complainant responded on 16 December 2015 and requested an internal review. The Home Office responded with the outcome of the review on 5 January 2016, which was that the refusal to confirm or deny under section 40(5) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 14 January 2016 to complain about the refusal of his information request. The complainant indicated that he did not agree with the reasoning given by the Home Office for the refusal of his request.

Reasons for decision

Section 40(5)

7. 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.
8. 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.
9. 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”.

10. The Commissioner considers it clear that confirmation or denial in response to the request would disclose personal data about Mr Gandhi; the person named in the request. It would disclose whether or not the Home Office held information about whether Mr Gandhi held British citizenship and when British citizenship was acquired. That information would clearly relate to Mr Gandhi and he 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.
11. 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 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.
12. 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. He has also considered what legitimate public interest there may be in disclosure of the information in question.
13. Covering first the reasonable expectations of the data subject, the status of the person named in the request is relevant here; it appears that the individual specified is the person of that name who is a high profile politician in India and an MP in the Indian Parliament. That he holds a position of such seniority and high profile is relevant to the question of what reasonable expectation of privacy he could hold. The complainant would argue that his position, and the possible relevance that the issue of his citizenship status has to that position, means that it would not be reasonable for him to hold an expectation of privacy in relation to the requested information.
14. Brief online research reveals that Mr Gandhi's citizenship status is a matter of debate and controversy. There are those who have questioned whether Mr Gandhi holds British citizenship and suggest that this means he should not be an MP in the Indian Parliament. The complainant believes that the requested information should be disclosed as evidence of his citizenship.
15. The usual position of the Home Office is to not comment on the nationality status of any individual and it has maintained this position in this case. It would argue that Mr Gandhi would hold a reasonable expectation that it would follow its normal approach and not disclose his personal data.

16. The view of the Commissioner is that *all* individuals are entitled to a level of privacy, whatever their status. He has taken this approach in relation to, for example, requests for personal data relating to members of the Royal Family, and in this case his view is that Mr Gandhi does have a right to privacy even whilst he occupies high office.
17. As to what this means regarding the data subject's reasonable expectation, the Commissioner believes that the correct route to resolve any questions relating to Mr Gandhi's eligibility for office would be through the appropriate Indian channels. He is not of the view that his seniority means that Mr Gandhi could not hold a reasonable expectation of privacy. The view of the Commissioner is, therefore, that Mr Gandhi could reasonably expect the Home Office to take its normal approach and not comment on his citizenship status.
18. 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 Mr Gandhi's eligibility for office is through the appropriate national channels and he has not taken into account the controversy relating to allegations about his nationality. Instead his focus is on what the loss of privacy may mean for the data subject personally.
19. The Commissioner has already mentioned that his 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 office.
20. 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.
21. 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 Mr Gandhi'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 Indian channels, including the question of whether information on this matter should be made public. His view is that there is not, therefore, legitimate public interest in the disclosure of this information on the basis of that issue.

22. 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. He 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. His finding is, therefore, that disclosure of the confirmation or denial would be unfair and in breach of the first data protection principle.
23. 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 in breach of the first data protection principle. His 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

24. 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>

25. 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.
26. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF