

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 February 2024

**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 information about passport application documents for their deceased parents submitted historically at the UK Consulate of Baghdad. The Home Office disclosed some information, with redactions in accordance with section 40 (personal information) of FOIA.
2. The Commissioner's decision is that, on the balance of probabilities, the Home Office does not hold any further information within the scope of the request. The Commissioner also finds that the Home Office was entitled to rely on section 40(2) of FOIA in relation to the redacted information.
3. The Commissioner does not require further steps.

#### Request and response

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4. On 28 July 2023, the complainant wrote to the Home Office and requested information in the following terms:

"I am writing to you under the provisions of the Freedom of Information Act, seeking access to specific information related to

passport applications submitted at the UK Consulate of Baghdad & other hereto-related records. I kindly request your assistance in extracting and forwarding to me all available direct information, and peripheral information, pertaining to the following two passports, which were issued by the H. M. Consul in Baghdad:

- 1) UK Passport issued on "1933-07-14" in Baghdad, Iraq, with Baghdad-registration no. "402".
  - 2) UK Passport issued on "1948-05-14" in Baghdad, Iraq, with Baghdad-registration no. "2550".
5. The Home Office responded on 21 August 2023. It provided a table containing various details about the two passports identified within the request, but stated that no further information was held relating to the passport applications or supporting documents for those passports.
6. The complainant responded on 21 August 2023 to express their dissatisfaction with the Home Office's response, and set out the following clarification of the information they were seeking:
- "1. The original documentation indicating that Khanum Qamar (daughter of Ali Asghar) was issued a passport on 11 January 1932, in Baghdad, with her place of birth mentioned as Baghdad.
  2. The source or documentation where the statement "HM Consul at Baghdad reports the loss of this passport 155/33, shows 2 August 1933" is derived from. Specifically, I would appreciate a clear explanation of whether "155/33" refers to a unique ID for the reported loss or if it has any other significance.
  3. If "155/33" is not an ID for the report of the lost passport, please provide clarification on why the statement "No passport number shown" was included in the table. Additionally, kindly specify the source from which you would ordinarily expect the passport number to be shown but wasn't.
  4. Regarding the entry "1 CHILD ADDED", please provide the source of this information. In case the child added has not reached the age of 100, I kindly request a clear explanation for withholding further details about this child.
  5. The meaning and context of the sentence "States same as Qamar Khanum" in the table entry, which appears to be the final sentence.
  6. Any additional information you hold about the report of the loss of the passport 155/33.

7. To re-confirm, whether the “date of issue” of the passport in question is indeed 11 January 1932, as stated originally, and that this was not a typographical error where “1933” was intended.
8. If the information provided in the table cell is in chronological order, kindly explain the process by which a child can be added to a passport after the said passport has been reported lost, as this scenario appears improbable.”
7. The Home Office responded on 4 September 2023. It disclosed scanned copies of two passport index cards, with some information redacted under section 40(2) of FOIA. It also stated that it did not hold any further information within the scope of the request.
8. The complainant requested an internal review on 9 September 2023, in which they set out various concerns about the Home Office’s response, including the assertion that the information redacted from the index cards may be their own personal information and therefore should be disclosed to them, along with any other records pertaining to them.
9. Following an internal review the Home Office wrote to the complainant on 4 October 2023. It maintained its original position, and also provided advice and assistance to the complainant regarding how to request their own personal information.

## **Reasons for decision**

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### **10. Section 1 – general right of access**

11. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to them.
12. FOA provides a right of access to information which is held by a public authority in recorded form at the time when it receives the request. This does not extend to the right to ask questions, or to seek explanations, opinions or clarifications, unless those explanations, etc. are already held by the public authority in recorded form. Public authorities are not obliged to create new recorded information in order to respond to a request.
13. In cases where a dispute arises over whether any further relevant recorded information is held by the public authority, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies

the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is more likely than not that the public authority holds further information relevant to the complainant's request.

14. In response to the Commissioner's queries about whether it holds any further information within the scope of the request, the Home Office confirmed that the records it holds relating to passports issued between 1929-1971 are all copies of index cards. These were written by staff at the time the passports were issued and each microfiche record is held on tapes, with each tape being for one year. HM Passport Office (HMPO) uses a machine which the tapes are fed into and staff then have to scroll through the tape to locate any relevant records. HMPO does not hold copies of any application forms or supporting documents for this period.
15. The Home Office explained that when the tapes are searched staff will first look for the surname, and then the forename, then the date of birth. By doing so they were able to locate the disclosed index cards relating to the complainant's mother, however no records were located for their father.
16. The Home Office further explained that when it receives a request for information about a deceased individual it would usually ask for the full name, date of birth, date of death, and, if the deceased individual would have been under 100 years of age, it would also request evidence of death. Even where the individual is over 100 years of age it is helpful for the Home Office to have a date of death to enable staff to know the dates between which to search. In this case the complainant was unfortunately unable to provide dates of birth for their parents except to say that they were born in the 19<sup>th</sup> century. The Home Office also did not have access to a date of death, and was provided with a number of variations of names. Therefore, the Home Office conducted its searches for information relating to the complainant's father from 1933 to 1948 based on the information that the complainant had been able to provide it with.
17. The Home Office confirmed that it searched relevant records from 1933 to 1948 for information relating to the complainant's father but these did not return any information. It explained that HMPO only holds records of British passports issued overseas from the date the country became independent. Therefore, if the complainant's father was issued with a British passport in India prior to independence in 1947 the Home Office would not hold a copy of that record.
18. The Commissioner is satisfied that the Home Office conducted appropriate and proportionate searches based on the information available to it. Therefore, the Commissioner is further satisfied that, on

the balance of probabilities, the Home Office is correct when it says that it holds no further information within the scope of the request.

## **Section 40 – personal information**

19. With regard to the redacted information on the index card, the complainant argues that the information will be their own and therefore the Home Office cannot withhold it from them.
20. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
21. Section 40(1) is an absolute exemption, meaning there is no requirement for the Commissioner to consider the public interest. Nor is he required to consider whether or not the complainant would be happy for their personal data published to the world at large. If the information is the complainant's own personal data, the information is simply not available via FOIA.
22. As there is no route to a requester's own personal data via FOIA, if the complainant wishes to access any personal information which the Home Office may hold about them, they should submit a Subject Access Request (SAR) as the Home Office has already correctly advised. A SAR is the correct and proper avenue to access one's own personal information.
23. In this case, the Home Office explained to the Commissioner that it has not been provided with any actual evidence to demonstrate that the complainant is in fact the individual whom the redacted information relates to. Therefore, in the absence of any conclusive evidence to prove otherwise, the Home Office remains of the position that the redacted information is third party personal information and, as such, relied on section 40(2) of FOIA to withhold it. If the data is indeed the personal information of the requester, then it is exempt under section 40(1) of FOIA.
24. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
25. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').

26. The first step is for the Commissioner to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
27. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

28. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

29. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
30. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
31. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
32. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that information falls within the definition of 'personal data' at section 3(2) of the DPA.
33. The fact that information constitutes personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
34. The most relevant principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

35. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

36. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

37. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

38. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f), which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedom of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>1</sup>.

39. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

40. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interests**

41. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that

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<sup>1</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

42. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests of the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
43. The complainant argues that the requested information is clearly within the sphere of public information, as in the UK birth, marriage and death information is a matter of public record, available from the General Register Office.
44. The complainant further argued that the precise Latin spelling of their name as it was originally recorded in the 1930s carries immense personal significance, as it has the potential to unlock a wealth of information regarding their birth and familial background, and ultimately aiding in their quest to trace their own original birth record. Moreover, delving into the original Latin spelling is a vital step towards uncovering the complete story of their parentage, specifically regarding identifying their father. Given the circumstances surrounding the era and the constraints on openly acknowledging certain familial relations during that time, having an accurate and authentic record of their name as recorded on the passport application provides essential clues and potentially leads to unveil their biological father's identity.

### **Is disclosure necessary?**

45. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
46. The Home Office acknowledged that whilst birth, marriage and death records are available publicly in the UK, the redacted information is part of a passport issued overseas and does not form any part of the birth records which are publicly available. The publication of birth records does not, in any case, mean that all personal information of this type is accessible under FOIA. Further, passport records for living individuals – or at least presumed living on the basis of being under 100 years of age – are categorically not a matter of public record.
47. With regard to the complainant seeking to better understand their family history, the Commissioner is satisfied that the SAR provisions which the



Home Office has directed the complainant to are the correct access regime should the complainant wish to access information held about themself. Disclosure via response to a SAR, should the redacted information indeed be proven to relate to the complainant, would also be less intrusive than any disclosure under FOIA. Therefore the Commissioner concludes that disclosure under FOIA is not necessary.

48. As the Commissioner is satisfied that disclosure is not necessary, there is no lawful basis for disclosure and therefore the Home Office was entitled to rely on section 40(2) of FOIA to withhold the information.

## Right of appeal

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49. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

50. 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.
51. 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 .....**

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Cheshire**  
**SK9 5AF**