

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 30 March 2011**

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

### **Summary**

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The complainant requested public documents from the Home Office UK Border Agency relating to the applications for naturalisation of two named individuals. The public authority refused the request on the basis that the requested information constitutes the personal data of the individuals concerned and disclosure would breach the principles set out in the Data Protection Act 1998. The Commissioner found the public authority in breach of the procedural requirements of sections 1(1)(a) and 10(1) in its handling of the request because it failed to inform the complainant that it did not hold any public documents relating to the request. However the Commissioner requires no remedial steps to be taken.

### **The Commissioner's Role**

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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**

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2. The Commissioner notes that under the Act the UK Border Agency is not a public authority itself, but is an executive agency of the Home Office.
3. On 22 April 2010, the complainant's solicitor made a request on his behalf for information contained in the public authority's records

relating to two named third parties' naturalisation applications. The request was phrased as follows:

'whatever public documents you hold concerning these applications. We are particularly interested in copies of birth certificates that have been lodged.'

4. The public authority issued a Refusal Notice on 18 May 2010 stating that it was unable to provide the information without the written consent of the individuals concerned because it was the personal data of third parties and disclosure would breach the principles of the DPA<sup>1</sup>.
5. Having sought the advice of the Commissioner, the complainant contacted the public authority on 13 September 2010 to ask it to conduct an Internal Review of its decision to refuse the requested information.
6. On 20 September 2010, the public authority provided its Internal Review essentially by repeating the content of its Refusal Notice.

## **The Investigation**

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### **Scope of the case**

7. The complainant originally contacted the Commissioner on 6 June 2010 but at that point the public authority had not conducted an Internal Review. The Commissioner accepted the complaint on 15 October 2010. The complainant specifically asked the Commissioner to consider the public authority's refusal to provide the information on the basis that disclosure would breach the DPA. However, given the wording of the request, the Commissioner's investigation was focussed on whether any public documents were held concerning the applications. He would only proceed to consider the application of any exemptions if any such documents were found to be held.

### **Chronology**

8. On 15 October 2010 the Commissioner wrote to both parties to confirm that the complaint was eligible for further investigation.

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<sup>1</sup> The Commissioner has commented on the public authority's interpretation of the request below in the analysis section.

9. On 29 November 2010 the Commissioner wrote to the public authority with a view to resolving the complaint informally. The Commissioner asked the public authority to clarify a number of points relating to its decision not to disclose the information within the scope of the request.
10. The Commissioner asked the public authority to clarify whether it held any public documents within the scope of the request. The Commissioner also asked the public authority to provide him with a list of all documents held in connection with the naturalisation applications at the time of the complainant's request. The public authority provided the Commissioner with the list and additional submissions on 13 December 2010.
11. The public authority explained that the list provided to the Commissioner did not include any birth certificates because none were held at the time of the complainant's request.
12. On 16 December 2010 The Commissioner advised the complainant to withdraw his complaint because from his preliminary assessment the public authority did not hold any publicly available information (i.e. public documents) within the scope of the request.

## **Analysis**

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13. The full text of the sections of the Act which are relevant in this case can be found in the Legal Annex at the end of this notice.
14. The Commissioner asked the public authority to clarify whether it held any 'public documents' concerning the naturalisation applications in question. The public authority explained that, generally, endowment of naturalisation is only recorded on its casework database. It confirmed that documents held in connection with successful applications are not accessible to the public or stored within a publicly accessible institution or database.
15. The Commissioner asked the public authority to clarify whether birth certificates were registered with the National Records Office or any other public body following a successful naturalisation application. The public authority explained that birth certificates are not registered with any public body, including the National Records Office, following a grant of naturalisation.
16. The public authority provided a list of the documents it held in connection with the naturalisation applications at the time of the

request. The Commissioner is satisfied that no birth certificates were held at the time of the request.

17. The Commissioner considered the information contained in the list provided by the public authority. He is satisfied that none of the information held constitutes public documents; rather he would characterise these as being private documents held by the public authority for the purposes of its public functions.
18. The Commissioner is satisfied, from its evidence and explanations, that the public authority does not hold information falling within the scope of the complainant's request. He has, therefore, not considered whether any other information held by the UKBA relating to these two individuals is subject to the application of section 40(2).
19. Therefore the Commissioner would note that in view of the fact that the request was for 'public documents' held in connection with the naturalisation applications, there was no need for the public authority to rely on the exemption at section 40 to withhold information that it did not actually hold. The Commissioner is satisfied that any documents held in connection with the applications at the time of the request were not publicly available and therefore not within the scope of the complainant's request.

## **Procedural Requirements**

### **Sections 1 and 10**

20. Sections 1(1)(a) and 10(1) combine to impose on a public authority a duty to either confirm or deny information is held within 20 working days of a request.
21. The Commissioner finds the public authority in breach of sections 1(1)(a) and 10(1) for failing to inform the complainant that it did not hold any public documents within the scope of the request.

## **The Decision**

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22. The Commissioner has decided that the public authority has breached its obligations under sections 1(1)(a) and 10(1) because it failed to inform the complainant that information was not held.

## **Steps Required**

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23. The Commissioner requires no steps to be taken.

## Right of Appeal

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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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

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

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

**Dated the 30<sup>th</sup> day of March 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution**

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

## Legal Annex

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### General Right of Access

#### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

### Time for Compliance

#### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

### Personal information

#### **Section 40(1) 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."

#### **Section 40(2) provides that –**

"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."

#### **Section 40(3) provides that –**

"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
  - a. 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."