

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2012

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

Decision (including any steps ordered)

1. The complainant requested information regarding the frequency of random checks on applications for passports. Though it held the information, the Home Office relied on sections 31(1)(a) and (e) of FOIA not to communicate it to him. These provide that information can be withheld where disclosure would or would be likely to prejudice the prevention and detection of crime and the operation of immigration controls.
2. The Commissioner's decision is that the exemption afforded by section 31(1)(a) is engaged and the public interest test favoured the maintenance of the exemption.

Background

3. The Identity and Passport Service ("IPS") is an executive agency of the Home Office. It is responsible for issuing UK passports and for the registration of births, marriages and deaths in England and Wales.
4. The IPS issues over 5 million passports a year¹ and between 2010-11 the government believes that there were 7,870 confirmed, probable or possible fraudulent applications for passports².

¹ <http://www.homeoffice.gov.uk/agencies-public-bodies/ips/about-us/>

Request and response

5. On 5 July 2011, the complainant wrote to the IPS stating:

"Passport applications are subject to a range of security checks. Random additional security checks on passport applications are generated by the IPS operating system. These random additional checks can create considerable processing delays for IPS customers, which may have extremely serious consequences".

6. He then requested information; the request and the IPS reply (1 August 2011) were as follows:

Request

"(a) What is the average processing time for passport applications not selected for the random additional checks?"

Reply

"All applications under go some form of security checking. Some are selected for further checking processes dependent on the completeness of the application and if the application is for a first passport or a renewal. Including processing by our partners this process can take up to 10 days".

Request

"(b) What is the average processing time for the proportion of passport applications selected for the random additional checks?"

Reply

"See above. We do not have definitive data on the processing time specifically for the security checking process."

Request

"(c) What proportion of passport applications is selected for the random additional checks?

(d) What proportion of passport applications using the Premium 4-hour walk in service is selected for the random additional checks?

(e) What proportion of passport applications undergoing a random additional security check is identified as having a problem that was not detected using standard IPS checking procedures?"

Reply

"Response to questions (c) - (e)

IPS does hold the requested information. However, we are withholding this information as it is exempt by virtue of sections 31 (a) and (e) of FOIA.....we believe that the public interest falls in favour of non-disclosure."

7. Following the complainant's request for an internal review (made on 17 October 2011), the IPS undertook the same. The review findings were that the original decision was correct but as it did not hold details of the averages requested in question a, it should have clearly stated this. These review findings were conveyed to the complainant under cover of a letter dated 14 November 2011.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Regarding the application of the public interest test he said -

"I contend that the Public Interest Test as applied to my questions is deliberately preventing the press and public from understanding and questioning clear shortcomings in the IPS. These shortcomings in IPS systems and processes are putting the UK at even more risk from crimes such as terrorism, fraud and illegal immigration than the recent misjudgements regarding the relaxation of border controls. It is in the public interest for acknowledged weaknesses in the processing of passport applications to be understood and questioned, particularly in view of the major international event taking place in the UK in 2012."

9. On 8 February 2012, the Commissioner asked the IPS to provide him with a copy of the withheld information and to provide more detail as to its reliance on the exemptions applied.
10. Under cover of a letter dated 16 March 2012, the IPS provided the Commissioner with a copy of the withheld information and more detail as to its reliance on section 31(1)(a). It also confirmed that with regard to the application of exemptions under sections 31(1)(a) and 31(1)(e) of FOIA towards the disputed information, the prejudice identified is that which 'would' arise rather than that which 'would be likely' to arise.

Reasons for decision

11. Section 31(1)(a) provides that information which is not exempt by virtue of section 30 is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
12. As to its reliance on section 31(1)(a) the IPS said -

"The applicant has asked three questions, concerning respectively, the number of passport applications subjected to random additional checks and the corresponding frequency with which varying application routes are subject to such checks. Disclosure of this information would accordingly serve to reveal the extent of additional security checks undertaken and the relative scrutiny afforded to the different routes by which a passport application might be made.

The overriding purpose in implementing these additional checks is to enable the identification of false documentation and combat the prejudice to immigration controls and law enforcement that stems from the use of such. Ensuring the integrity and legitimacy of passport documentation is a cornerstone of UK border security. Determined individuals and criminal groups are constantly engaged in efforts to undermine such for purposes including - but not limited to - people trafficking, fraud and the evasion of justice. As passports facilitate overseas travel, fraudulently obtained passports lead to illegal immigration and prejudice immigration controls. Such criminal activity runs contrary to the UK public interest.

Were the Home Office to disclose data into the public domain that would enable a comparison to be drawn between the varying scrutiny that is afforded to the different routes passport applications might take, such would self evidently allow a comparison to be drawn as to which application route is subject to the most robust scrutiny. Determined parties would then be able to more effectively target their efforts in order to make use of the application system subject to the

least stringent checks when seeking to rely on documentation...The Home Office's position is that disclosure of the withheld information would enable criminals to identify the weakest points of the application process, which would in turn compromise the integrity and security of IPS.

To a similar extent, revealing the total number of passport applications subject to additional checks would also serve to reveal information that would be of use to those seeking to undermine immigration controls and law enforcement. ... The exemption at section 31(1)(a) of the Act states that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice to the prevention and detection of crime. Forgery of a UK passport, or the procurement of services by reference to such a document, are criminal offences. To this end disclosure of information by the Home Office that would facilitate or assist with these criminal undertakings would run contrary to the prevention and detection of crime."

13. Where possible the Commissioner expects a public authority to provide evidence that supports its contention that the prejudice envisaged by an exemption would occur. However, since the prejudice test relates to something which might happen in the future, rather than something, which has already happened, it is not possible in most cases to provide certain or near certain proof. However, the Commissioner considers that the Home Office's contention, as set out above, is not credibly deniable. The Home Office also provided the Commissioner with further explanation which strengthens its case but which he is not able to set out in this Notice as it would compromise the withheld information.
14. Knowing the frequency of certain types of scrutiny for particular routes of passport applications would facilitate those attempting to gain a passport fraudulently. It would assist them to determine which method of passport application may be the most likely to obtain a passport fraudulently.
15. The Home Office did not supply the Commissioner with specific arguments on this point regarding information request (e). However the Commissioner believes it is reasonable in the circumstances for him to extrapolate its arguments for information requests (c) and (d) to information request (e). That is the requested information at (e), if disseminated publically, would give a strong indication as to the effectiveness of the standard checking procedure, resulting in the same kinds of prejudice identified for requests (c) and (d).
16. Having considered the Home Office's submissions and the withheld information itself, the Commissioner finds that the withheld information does engage the exemption provided by section 31(1)(a) in that

disclosure of the withheld information would prejudice the prevention or detection of crime.

17. Section 31(1)(a) is a qualified exemption and therefore it is subject to the public interest test. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
18. The IPS identified the following public interest factors in favour of maintaining the exemption:
 - The IPS faces daily challenges in identifying and routing out applications either from those who do not qualify for them or from criminals who seek to obtain multiple identities. Disclosure of the disputed information would create clear prejudice to the discharge of IPS' remit in this area as it would blunt one of the key tools used to identify fraudulent passport applications. Given the value of the role being performed by IPS in carrying out these additional checks any move to stymie the value or effectiveness of such would not be in the public interest.
19. The Home Office and the complainant identified the following public interest factors in favour of releasing the withheld information:
 - The Home Office acknowledges the public interest in knowing the frequency and distribution of additional checks carried out on passport applications. Disclosure of the disputed information would allow the public to gauge the relative extent of the scrutiny afforded to this important area of border security and engage in informed debate as to whether such checking is to an appropriate degree.
 - The press and public require the withheld information to understand and question any shortcomings in the IPS.
20. The Commissioner in considering the public interest test starts by focusing on the purpose of the relevant exemption. By finding that the exemption is engaged, the Commissioner acknowledges that releasing the withheld information would, in this case, prejudice the prevention or detection of crime. Ensuring or aiding the prevention or detection of crime is a strong factor for the maintenance of the exemption.
21. The Commissioner also accepts that releasing the withheld information will more likely than not, certainly in the short term to medium term, make the IPS' tasks more difficult. This is not in the public interest and therefore a further factor for maintaining the exemption.

22. Counter-balanced against the factors for maintaining the exemption are those that favour the release of the information. Releasing the information would certainly facilitate the public's understanding of passport control and thus contribute to the public debate as to whether they are inadequate, adequate or too onerous. The Commissioner asked himself whether those public interest considerations are harmed significantly by the absence of the withheld information. The public are aware of the number of applications for a passport and the numbers of applications found to be - or may be - fraudulent. Whilst details of the actual frequencies of checks on the certain types of passport applications would add to the debate (as would withheld request (e) information), it would come at the cost of facilitating the attempts to obtain passports fraudulently.
23. On balance, the Commissioner's decision is that the weighing of the public interest factors favours the maintenance of the exemption. The Commissioner accepts that releasing the information will provide aid to those that seek to fraudulently obtain a passport and make the role of the IPS to prevent this more difficult. Whilst there was strong merit in the factors for releasing information, in particular its facilitation of public discussion on the effectiveness of the prevention of fraudulently obtained passports, this is outweighed by those factors for the maintenance of the exemption. Consequently, the Commissioner has not proceeded to investigate the application of section 31(1)(e).

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Alexander Ganotis
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