

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 April 2017

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

Decision (including any steps ordered)

1. The complainant requested from the Home Office information about whether or not Mr Abbott, the former Prime Minister of Australia, held both Australian and British citizenship or had renounced British citizenship.
2. The Commissioner found that confirmation or denial would be unfair and therefore in breach of the first data protection principle. Accordingly she decided that the exemption provided by section 40(5) FOIA is engaged and that the Home Office had correctly relied on that exemption.
3. The Commissioner does not require the Home Office to take any steps to comply with the legislation.

Request and response

4. On 21 November 2016, the complainant wrote to the Home Office (HO) and requested information in the following terms:

Dear Home Office,

Anthony John Abbott was born in London on 4 November 1957.

I need to know if Mr Abbott has renounced his British citizenship or not.

I do not require a copy of the form RN nor of any letter sent to him regarding renunciation of British citizenship.

The UK Data Protection Act 1998 allows me to make this application under section 35.

35 Disclosures required by law or made in connection with legal proceedings etc.

(1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.

(2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary—

(a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or

(b) for the purpose of obtaining legal advice, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

I require the information to obtain legal advice on prospective legal proceedings against Mr Abbott under an Australian law called the Common Informers (Parliamentary Disqualifications) Act 1975. This Act requires one to determine if Mr Abbott is disqualified from parliament under S44 of the Australian constitution. The existence or not of renunciation of British citizenship would allow me to seek legal advice. Part 2 (a) of that section of the data Protection act is most relevant, " (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), "

5. The HO responded on 6 December 2016. HO stated that it could neither confirm nor deny holding the requested information and relied on the section 40(5) FOIA exemption.
6. Following an internal review HO wrote to the complainant on 19 January 2017 confirming reliance on the section 40(5) FOIA exemption.

Scope of the case

7. The complainant contacted the Commissioner on 24 January 2017 to complain about the way his request for information had been handled. He said he simply wanted to know whether or not Mr Abbott had renounced his British citizenship. (Mr Abbott was born in London and had been Australian Prime Minister from 2013 – 2015.)
8. The Commissioner considered the HO application of the section 40(5) FOIA exemption. She noted that in 2016 the First Tier Tribunal

(Information Rights) (“the Tribunal”) had considered a request from a different complainant for virtually the same information.

Reasons for decision

Section 40(5)

9. Section 1(1)(a) FOIA imposes a duty on public authorities to confirm or deny whether or not requested information is held. Section 40(5) FOIA provides an exemption from that duty where confirmation or denial would disclose personal data and where that disclosure would breach any of the data protection principles embodied in the Data Protection Act 1998 (DPA).
10. Consideration of this exemption from the duty to confirm or deny involves two stages. Firstly, confirmation or denial in response to the request must involve a disclosure of personal data and, secondly, that disclosure must breach at least one of the data protection principles.
11. 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 Data Protection Act 1998 (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”.
12. In this case the Commissioner considered that the complainant is seeking data that relates to a living individual who can be identified from the data or the data and any other information which is likely to be publicly available and in his possession. This is because confirmation or denial in response to the request would disclose personal data about the person named, Mr Abbott. It would disclose whether or not HO held information about whether or not Mr Abbott held British citizenship. That information would clearly relate to Mr Abbott who is identified in the wording of the request. The information would, therefore, constitute personal data according to the definition given in section 1(1) DPA.
13. 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 here 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 fair to the data subject.

14. In forming a conclusion on fairness the Commissioner took into account the reasonable expectations of the data subject and what consequences disclosure may have. She also considered what legitimate public interest there might be in disclosing the information.
15. The complainant said that there was "massive" public interest in settling the issue of whether or not Mr Abbott had renounced British citizenship. If he had not, the complainant said, he could have been in parliament illegally. The complainant also said that the DPA allowed information to be disclosed for court cases.
16. The complainant added that a request, made in Australia to the relevant Australian government department, for papers showing that Mr Abbott had renounced British citizenship, had concluded that, after all reasonable steps had been taken to locate them, relevant papers had not been found.
17. In its response to the information request, HO said that it could not confirm or deny holding the requested information without contravening the first data protection principle, and so the first part of section 40(5)(b)(i) FOIA applied (ie referring to the data protection principles). In particular, HO did not consider that confirming or denying whether or not it held the information would be fair since that would involve disclosing personal data.
18. HO also did not accept that any condition in Schedule 2 to the DPA could be met and this would be necessary for disclosure to satisfy the first data protection principle.
19. HO said it did not have the consent of the data subject (condition 1) and did not believe that confirming or denying was necessary for any legitimate interest pursued by the complainant or anyone else including the public at large (condition 6); even if it were, this would be outweighed by the prejudice there would be to Mr Abbot's rights and legitimate interests. HO added that it did not consider that confirmation or denial was necessary for the administration of justice (condition 5).
20. HO said that the exemption at section 29 DPA (crime and taxation), which the complainant had referred to, applied only to disclosure of information for specific purposes in specific circumstances. It could not directly affect the application of section 40 FOIA. Disclosure under FOIA was purpose-blind and made to the world at large. Even if the section 29 DPA exemption applied, HO would still need to satisfy a Schedule 2 condition, which it did not consider was possible.
21. The Commissioner noted that in February 2016 (after Mr Abbott had ceased to be Prime Minister) the Tribunal had considered a virtually identical request from another individual. The Tribunal had dismissed the then complainant's appeal saying:

"20. Here, in terms of balancing the public interest in relation to confirming or denying whether information is held about Mr Abbott, Mr Abbott has a reasonable expectation of privacy given that the UK Home Office does not comment on the nationality status of any individual no matter who s/he is.

21. The Tribunal finds that confirming or denying whether the information requested was held would result in the disclosure of personal data which would be unfair to the data subject and which would breach the first data protection principle."

22. In her own analysis, the Commissioner had regard for the Tribunal's reasoning and decision.
23. The Commissioner considered the reasonable expectations of the data subject. She saw that Mr Abbott had been Prime Minister of Australia. The fact that he had held a position of such seniority and high profile was relevant to the reasonable expectations of privacy he could hold. The complainant considers that Mr Abbott's position in public life, and the relevance that the issue of his citizenship status had to that position, meant that it would not be reasonable for him to hold an expectation of privacy in relation to it.
24. From her own researches, the Commissioner has seen that Mr Abbott's citizenship status has been a matter of some discussion in Australia. Some have questioned whether Mr Abbott holds British citizenship and suggested that, if he does, that could affect his eligibility to hold office leading to calls for evidence of Mr Abbott's citizenship status to be disclosed publicly.
25. HO said that it does not comment on the nationality status of individuals and saw no reason to do so in this case. HO said that it did not have Mr Abbott's consent to confirm or deny holding the requested information and did not accept that confirmation or denial was necessary to satisfy any legitimate interest pursued by the complainant or any other member of the public.
26. The view of the Commissioner is that all individuals are entitled to a reasonable level of privacy, whatever their status. She takes this approach in relation, for example, to requests for personal data relating to members of the Royal Family. The Commissioner believes that Mr Abbott has a right to privacy notwithstanding his having occupied high office.
27. With regard to the consequences of confirmation or denial for the data subject, the Commissioner found that the correct forum for resolving any legitimate question about Mr Abbott's eligibility for office in Australia is through the Australian judicial system. She has not taken into account questions that have been raised about his eligibility for Australian public office.

28. The Commissioner's focus is on what a loss of privacy might mean for the data subject personally. Confirmation or denial in contravention of the reasonable expectations of the data subject would be likely to distress that individual; any distress would not be mitigated by the holding of high office.
29. Turning to whether or not there is any legitimate public interest in confirmation or denial, whilst section 40(5) FOIA is not a qualified exemption, an element of public interest is necessary in order for disclosure to comply with the first data protection principle. The question for the Commissioner is whether any legitimate public interest that does exist outweighs the factors against disclosure discussed above.
30. The complainant considers that there is a strong public interest in disclosure owing to the issues that some have raised about Mr Abbott's citizenship status. The Commissioner recognises that this is a matter of public interest, but is also an issue to be settled through the appropriate Australian channels, including the question of publication. Her view is that there is not, therefore, a legitimate public interest in the confirmation or denial by HO of this information on the basis of that issue.
31. The Commissioner found that confirmation or denial would be unfair and therefore a breach of the first data protection principle. Accordingly she decided that the exemption provided by section 40(5) FOIA is engaged and that HO is not obliged to confirm or deny holding relevant information.

Right of appeal

32. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Jon Manners
Group Manager

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