

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 June 2021

**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 from the Home Office, information regarding the citizenship status of Armen Sargsyan, the President of the Republic of Armenia.
2. The Commissioner's decision is that the Home Office is entitled to rely on section 40(5) of the FOIA, to refuse to confirm or deny that it holds the requested information.
3. The Commissioner does not require the Home Office to take any further action in this matter.

#### Request and response

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4. On 19 June 2020, the complainant wrote to the Home Office and requested information in the following terms:

"Armen Sargsyan (also known as Armen Sarkissian)

*D.O.B: 23 June 1953.*

*The Request Please advise:*

1. *whether or not the above subject has acquired UK citizenship and if so, on what date; and*
2. *whether or not the above subject has renounced UK citizenship and if so, on what date.*

*In either event, please supply documentary evidence.”*

5. The Home Office responded on 14 July 2020. It stated that it was unable to confirm nor deny holding the information, as it would be considered personal data and to either confirm or deny holding it, would be a breach of the General Data Protection Regulation (GDPR).
6. Following an internal review the Home Office wrote to the complainant on 29 September 2020. It upheld its original position, refusing to neither confirm nor deny holding the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 October 2020, to complain about the way their request for information had been handled.
8. The Commissioner considers that the matter to be decided is whether the Home Office is entitled to rely on section 40(5) of the FOIA, to refuse to either confirm or deny it holds the requested information.

### **Reasons for decision**

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9. Section 1(1)(a) of FOIA provides that where a public authority receives a request for information, it is obliged to tell the applicant whether it holds that information. This is commonly known as the duty to confirm or deny.
10. There are however exemptions from the duty to confirm or deny. It should be noted that when applying an exemption from the duty to confirm or deny, a public authority is not restricted to only considering the consequences of the actual response that it would be required to provide under s1(1)(a). For example, if it does not hold the information, the public authority is not limited to only considering what would be revealed by denying the information was held, it can also consider the consequences if it had to confirm it did hold the information and vice versa.
11. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulation EU2016/679 ('GDPR') to provide that confirmation or denial.
12. Therefore, for the Home Office to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny it holds information falling within the scope of the request the following two criteria must be met:

- Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
- Providing this confirmation or denial would contravene one of the data protection principles.

**Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?**

13. Section 3(2) of the DPA 2018 defines personal data as:

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

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. 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.
16. The Commissioner is satisfied, from reviewing the request, that if the Home Office were to either confirm or deny it held the information, it would involve the disclosure of personal data. The first criterion set out is therefore met.
17. The fact that confirming or denying whether the requested information is held would reveal the personal data of a third party (or parties) does not automatically prevent the Home Office from refusing to confirm whether it holds this information. The second element of the test is to determine whether such a confirmation or denial would contravene any of the data protection principles.
18. The Commissioner considers that the most relevant data protection principle is principal (a).

**Would confirming whether or not the requested information is held contravene one of the data protection principles?**

19. Article 5(1)(a) GDPR states that:

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

20. 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 – or as in this case, the public authority can only confirm whether or not it holds the requested information – if to do so would be lawful (i.e. it would meet one of the conditions of lawful processing listed in Article 6(1) GDPR), be fair and be transparent.

## Lawful processing: Article 6(1)(f) GDPR

21. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.
22. The Commissioner considers that the condition most applicable on the facts of this case would be that contained in Article 6(1)(f) GDPR which provides as follows:

*“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 freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>1</sup>.*

23. In considering the application of Article 6(1)(f) 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 confirming or denying that the requested information is held 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(s).

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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 2018) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the 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”.

24. 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**

25. In considering any legitimate interests in confirming whether or not the requested information is held in response to a FOIA request, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sake as well as case specific interests.
26. Further, a wide range of interests may be legitimate interests. They can be the requester’s own interests or 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.
27. There is a legitimate interest in political figures and if they are complying with the laws of individual countries, specifically in relation to their citizenship status. In this case, the issue of the citizenship of Armen Sargsyan is a matter of current interest and wider investigation in Armenia. The Commissioner accepts there is a legitimate interest in confirming whether or not the requested information is held.

### **Is confirming whether or not the requested information is held necessary?**

28. ‘Necessary’ means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so confirming whether or not the requested information is held would not be necessary if the legitimate aim could be achieved by something less. Confirmation or denial under FOIA that the requested information is held must therefore be the least intrusive means of achieving the legitimate aim in question.
29. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

### **Balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms**

30. It is necessary to balance the legitimate interests in confirming whether or not the requested information is held against the data subject(s)’ interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of the confirmation or denial. For example, if a data subject would not reasonably expect the public authority to confirm whether or not it held the requested information in response to a FOI request, or if such a confirmation or denial would

cause unjustified harm, their interests or rights are likely to override legitimate interests in confirming or denying whether information is held.

31. Disclosing whether the requested information was held would reveal sensitive, personal information regarding the individual's UK citizenship status.
32. Whilst the Commissioner notes the complainant's argument, that they believe that President Armen Sargsyan has advised that he renounced his UK citizenship in 2011 and that they consider, due to this announcement, that the individual waived their legitimate expectation that the Home Office will not publish such information, she is of the view that *all* individuals are entitled to a level of privacy, whatever their status. The Home Office do not have consent from President Armen Sargsyan to release this information.
33. The Commissioner considers 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, regardless of their seniority. The view of the Commissioner is that all individuals are entitled to a level of privacy, whatever their status. She has taken this approach in other cases<sup>2</sup>.
34. The Commissioner recognises that this is a matter of public interest, but notes that this is an issue that should be settled through the appropriate channels of investigation in Armenia.
35. The Commissioner agrees with the Home Office, when it says that it recognises Mr Armen Sargsyan is a prominent individual, as he is a former Prime Minister and now President of Armenia, but it does not consider that this affects his right to have his personal data protected.
36. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms, and that confirming whether or not the requested information is held would not be lawful.
37. The Commissioner has therefore decided that the Home Office was entitled to refuse to confirm whether or not it held the requested information on the basis of section 40(4B)(a)(i) of the FOIA.

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<sup>2</sup> [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk/for-organisations/guide-to-the-free-information-act/2000-act/section-50)

## Right of appeal

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38. 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@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)

39. 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.

40. 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 .....**

**Phillip Angell  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
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SK9 5AF**