Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **26 November 2018**

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

Decision (including any steps ordered)

1. The complainant has requested information about British citizens who have had an observation placed in their British passport linking the document to foreign passports.

2. The Home Office says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate limit to do so.

3. The Commissioner's decision is that the Home Office is not obliged to comply with the request under section 12(1) and she is satisfied that the Home Office met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the Home Office to take any steps.

Background

4. The Home Office explained to the Commissioner that Her Majesty's Passport Office (HMPO) use "observations" for several reasons such as names, titles and immigration status. The Home Office also confirmed that HMPO does not use "observations" to record dual nationality. It explained that, in exceptional circumstances, where an individual holds a passport from another country with a different name to that on their UK passport, an "observation" is used; this is a free text field and will include details of the individual's other passport including the country that has issued it.

5. The Home Office's guidance[1] states the following:

"Where, in exceptional circumstances, a different name is allowed for dual nationals then this will be recorded on Home Office systems as an Observation."

Request and response

6. On 18 November the complainant wrote to the Home Office and requested information in the following terms:

"a) How many British citizens are there, who have had an observation placed in their British passport linking the document to foreign passports?

b) How many of these British citizens affected above, also hold British-Iranian dual nationality?"

7. The Home Office responded on the 12 December 2017. It stated that it was not obliged to comply with the information request as section 12(1) of the FOIA applied.

8. Following an internal review the Home Office wrote to the complainant on 7 February 2018. It maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on the 12 February 2018 to complain about the way his request for information had been handled.

10. The Commissioner sought clarification from the Home Office in regards to whether both parts of the complainant's request related to dual nationality. The Home Office confirmed this was correct.

11. The Commissioner's investigation has focussed on whether the Home Office correctly applied section 12(1) of the FOIA to the request. She has also considered whether the Home Office met its obligation to offer advice and assistance under section 16 of the FOIA.

[1]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/550968/Home_Office_Use_and_Change_of_Names_revision_060916.pdf

Reasons for decision

Section 12 – cost limit

12. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information where it estimates that the cost of complying would exceed the appropriate limit.

13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as the Home Office. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes at a time limit of 24 hours.

14. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

Complainant's position

15. The complainant is dissatisfied with the Home Office's calculation claiming it would take it take in excess of 24 hours to manually check each passport for an issued "observation". The complainant stated that he firmly believes that it should not take the Home Office any longer than 1 minute to run a computer search for the information request.

16. The complainant rejected the Home Office's statement that dual nationality is not a question asked on the passport application form and that data regarding this cannot be identified and retrieved from Home Office systems within the time limit.

Home Office's submissions

17. In its internal review, the Home Office explained to the complainant:

> *"… 'observations' on a passport are only held in the note field of each application on our computer systems. In order to provide a response to*

[the complainant]'s request, notes on the form would have to be examined, and this would take roughly 3 minutes per form. Using 2016/17 as an example, where a total of 6,837,766 printed British passports were produced; if each of these were to be checked it would take a total of 341,888.30 hours, clearly exceeding the time limit as defined by section 12 of the Act".

18. In its submissions to the Commissioner the Home Office confirmed that it held the information in regards to both parts of the complainant's request. It explained that although HMPO held the information requested on its electronic record system it is not held in a reportable format and therefore it is not possible for HMPO to provide the information requested within the cost limit.

19. The Home Office explained that the reason the requested information is not held in a reportable format is that dual nationality information is not a requirement on the Passport Form. It explained that in exceptional circumstances where an individual holds a passport from another country, with a different name to that being used on their UK passport, an "observation" is used which will include details of the other passport including the country that has issued it.

20. The Home Office also explained that the "observation" notes section is a free text field and therefore as this is an unstructured free text it is not possible to report on what is written on the "observation" without manually checking each individual passport record.

21. In the Home Office's submission to the Commissioner is stated the following:

"If the Department were to take the average number of passports issued in one day it would exceed the cost limit to examine. For example, on average, approx 20000 passports are issued daily. To examine each record for individual Observations would take, conservatively, approximately 3 minutes per record. This would equal over 900 hours of work. On average 800 passports are issued each hour and to examine this number of passports would take 40 hours. The estimated costs for [the complainant's] request is therefore huge. It is clear to me that section 12(1) is engaged."

22. The Home Office confirmed that there is no quicker way to search for the information than to manually check each individual passport record and that the estimate provided was based upon the quickest method of gathering the information. It stated that although it has not carried out a formal sampling exercise, its response is based on substantial operational experience dealing with data requests on an almost daily basis.

Conclusion

23. The Commissioner asked the Home Office to provide a copy of the passport form to evidence its claim that dual nationality information is not a requirement. The Home Office provided a copy of the passport form and the Commissioner can confirm that dual nationality information is not a requirement.

24. From the information provided by the Home Office the Commissioner has no reason to not believe the Home Office's claim that it cannot run an electronic search for dual nationality data. She therefore agrees that the Home Office would need to check each individual passport record to establish whether it recorded an "observation" and if this contained information relating to dual nationality. The Commissioner has considered the Home Office's submissions and accepts that even if it was to take the Home Office 1 minute to search each individual passport record it would take the Home Office in excess of the 24 hours set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

25. Therefore, it is the opinion of the Commissioner that the Home Office is entitled to rely on section 12(1) of the FOIA to refuse to comply with the complainant's request.

Section 16: advice and assistance

26. Section 16 of the FOIA provides that a public authority is to provide advice and assistance to applicants. The Home Office was of the view that it could not provide practical advice or assistance to the complainant that would help him submit a request that would not exceed the cost limit.

27. The Commissioner cannot see any easy way in which the complainant's request could be responded to. It is open-dated and therefore includes all passports which have been issued and is also based on the premise that the data he requires is recorded on the Home Office's system in a searchable field rather than a free text field which is not the case. It is clear to the Commissioner that the information sought by the request, and the way in which the information is stored on the Home Office system means that it would be unable to provide advice on how to refine the request sufficiently enough to bring it within the 24 hour time limit. On this basis the Commissioner finds that there are no steps that the Home Office could take under section 16(1) of the FOIA.

Right of appeal

28. 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

29. 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.

30. 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 .....

Deborah Clark
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF