

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 May 2018

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

#### Decision (including any steps ordered)

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1. The complainant requested information relating to an attempt to deport a named individual. The Home Office refused the request, citing the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that this exemption was cited correctly and so the Home Office was not obliged to disclose the requested information.

#### Request and response

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3. On 16 September 2017 the complainant wrote to the Home Office and requested information in the following terms:

*"I would like to know how much money you have spent trying to deport [name redacted]. I am asking about any costs accrued by you during this process including the cost of his detention, the cost of guards to accompany him on flights, the total cost of plane tickets bought for flights (including seats that were deliberately kept empty to facilitate the deportation), legal fees, etc.*

*I would like you to show this information as an itemised list."*

4. The Home Office responded on 9 October 2017. It stated that the request was refused under the exemption provided by section 43(2) (commercial interests) of the FOIA.

5. The complainant responded on 15 October 2017 and requested an internal review. The Home Office failed to carry out the internal review within a reasonable period.

## Scope of the case

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6. The complainant contacted the Commissioner on 14 November 2017 to complain about the refusal of her information request. The complainant indicated that she did not agree with the reasoning given by the Home Office for refusing her request.
7. In response to her initial contact with the Commissioner the complainant was advised that she should allow at least 40 working days for the Home Office to carry out the internal review she had requested. The complainant was advised that if she had not received the outcome of the internal review once 40 working days had elapsed, she should contact the ICO again at that stage.
8. The complainant contacted the ICO again on 8 December 2017 and stated that she had still not received the internal review outcome. In view of the delay until that point, the case was accepted at that time without waiting any longer for the review to be completed. The Commissioner comments on the internal review delay in the Other matters section below.
9. During the investigation of this case the Home Office notified the Commissioner and the complainant that it now also cited the exemption provided by section 40(2) (personal information) of the FOIA. The following analysis focusses on that exemption.

## Reasons for decision

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### Section 40

10. The Home Office cited section 40(2) of the FOIA, which provides an exemption for information which constitutes the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
11. Covering first whether the information constitutes the personal data of any individual, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

*“personal data’ means data which relate 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. As the data subject is named in the request, it is clear that he is identified in relation to the withheld information. The Commissioner also considers it clear that, as this information concerns the attempt to deport him, it also relates to that individual. The requested information does, therefore, constitute the personal data of the person named in the request.
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, in general, fair to the data subject.
14. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subject and what consequences disclosure may have. She has also considered what legitimate public interest there may be in disclosure of the information in question.
15. Covering first the reasonable expectations of the data subject, it is relevant here that the events of the attempted deportation were the subject of a considerable amount of media coverage. Particularly notable is that the data subject participated in that media coverage by giving interviews.
16. It could be argued that this should be taken as an indication that the expectation of privacy held by the data subject would be reduced. Much information about his situation is available in the public domain, including details that he has disclosed himself, hence the argument could be made that he could not now hold a strong expectation of privacy in relation to other information about the attempt to deport him.
17. The Commissioner would not agree with that reasoning however. She notes that the details disclosed into the public domain were already known to the complainant before being disclosed more widely. The Commissioner is aware of no suggestion, however, that the data subject is aware of the financial data requested by the complainant in this case. In the absence of evidence that suggests otherwise, the Commissioner

has proceeded on the basis that the data subject is not already aware of the detailed financial information specified in the request. This would mean that the data subject would learn of these details for the first time when they are disclosed into the public domain. The Commissioner's view is that the data subject would hold a reasonable expectation that he would not learn of personal data that relates to him for the first time as a result of it being disclosed into the public domain.

18. As to the consequences of disclosure, the issue here is what impact disclosure would have on the data subject. On this point, the Commissioner's view is that disclosure of the information in question in contravention of the reasonable expectation of the data subject would be likely to be distressing to that individual.
19. Turning to whether there is any legitimate public interest in the confirmation or denial, whilst section 40(2) is not a qualified exemption in the same way as some of the other exemptions in Part II of the FOIA, an element of public interest is necessary in order for disclosure to comply with the first data protection principle. The question here is whether any legitimate public interest that does exist outweighs the factors against disclosure covered above.
20. The complainant would argue on this point that there is a strong public interest in disclosure due to controversy over the attempt to deport the individual named in the request. The Commissioner agrees that there is valid public interest in this information owing to the controversy relating to that event and the high level of public interest in immigration related matters in general. In particular, the Commissioner is of the view that there is a public interest in disclosure of information about public funds that are used for these matters.
21. As to whether this outweighs the factors against disclosure, however, the Commissioner is of the view that it does not. There is already plentiful information in the public domain to inform the discussion on these issues and the Commissioner does not believe that there is sufficient remaining public interest in disclosure of the specific information in question here for this to outweigh the factors against disclosure covered above. Having also found that disclosure would not be within the reasonable expectations of the data subject and that it would have a negative consequence upon that individual, the Commissioner's view is that disclosure of this information would be unfair and in breach of the first data protection principle.
22. Turning to the overall conclusion, the Commissioner has found that the requested information constitutes the personal data of an individual other than the requester and that the disclosure of this personal data would be in breach of one of the data protection principles. This means

that her conclusion is that the exemption provided by section 40(2) of the FOIA is engaged and the Home Office was not obliged to disclose this information.

## **Other matters**

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23. The approach of the Commissioner is that internal reviews should be completed within a maximum of 40 working days. The Home Office failed to keep to this timescale in this case and must ensure that it has a process in place to enable it to carry out internal reviews promptly. A separate record of the internal review delay in this case has been made and this issue may be revisited should evidence from other cases suggest that this is necessary.

## 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

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** .....

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**