

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 December 2024

**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 the asylum claim/immigration status of Abdul Ezedi.
2. The Home Office ultimately disclosed some information but refused to provide the remainder, citing sections 40(2) (personal information), 41(1)(b) (information provided in confidence), 31(1)(e) (law enforcement), 38(1)(a) (health and safety) and 21(1) (information accessible by other means) of FOIA.
3. The Commissioner has investigated its reliance on sections 41, 31, 38 and 40 of FOIA.
4. The Commissioner's decision is that the Home Office was entitled to withhold the information withheld by virtue of those exemptions.
5. The Commissioner requires no steps to be taken as a result of this decision.

## Background

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6. Abdul Ezedi, the individual named in the request in this case, is believed to have thrown a chemical over his ex-partner, and injured her two children aged eight and three, before fleeing, on 31 January 2024<sup>1</sup>.

## Request and response

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7. On 13 February 2024, the complainant wrote to the Home Office and requested information in the following terms:

“BACKGROUND

According to the MPS [Metropolitan Police Service], Abdul Ezedi is dead, having jumped into the Thames.

<https://www.theguardian.com/uk-news/2024...>

REQUEST

information held which relates to the asylum claim/immigration status of Abdul Ezedi.

This should include any personal data of the CoE [Church of England] /church regarding the alleged conversion from Islam to the Christian faith. There is legitimate interest in fake conversions to defraud the asylum system. Request includes all tribunal etc. records, not just asylum but criminal, too”.

8. The Home Office responded on 6 March 2024. It neither confirmed nor denied (NCND) holding information in scope of the request, citing sections 40 and 41 of FOIA.
9. When requesting an internal review of its handling of the request, the complainant noted that the Home Office had released similar information in a previous case.
10. Following an internal review, the Home Office wrote to the complainant on 18 June 2024. It revised its position, clarifying that the NCND response no longer stands. However, it stated that the requested information was exempt from disclosure, citing sections 31, law enforcement), 32 (court records) and 38 (health and safety) of FOIA in addition to sections 40 and 41.

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<sup>1</sup> <https://www.bbc.co.uk/news/articles/ckrgeyeyzkmo>

## Scope of the case

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11. The complainant initially contacted the Commissioner to complain about the Home Office's delay in conducting an internal review.
12. Following its provision, they remained dissatisfied with the outcome of the internal review. They did not agree with the exemptions applied or how the public interest test had been conducted.
13. During the course of the Commissioner's investigation, the Home Office disclosed some information within the scope of the request to the complainant. It told the complainant:

"Some information remains withheld under the exemptions at the following sections of the FOIA: 31(1)(e) (Law enforcement), 38(1)(a) and (b) (Health and safety), 40(2) (Personal information and 41(1) (Information provided in confidence). The Home Office no longer relies on the exemptions at sections 31(1)(a), (b) or (c) or 32(1)(c) (Court records). The Home Office additionally relies on section 21(1) (Information accessible by other means) because some of the previously withheld information is now in the public domain".
14. The complainant confirmed to the Commissioner that they had received partial disclosure of the requested information. However, they remained dissatisfied with the revised response, specifically the application of sections 31(1)(e), 38(1)(a) and (b), 40(2) and 41(1). No reference was made to section 21.
15. They told the Commissioner:

"There is a legitimate interest in understanding the events that led up to the chemical attack and suicide".
16. Regarding the complainant's reference to a previous case, the Home Office acknowledged that the request in this case has some similarities to another request made by the same complainant. That request for information was in relation to the immigration/asylum record for the Liverpool Women's Hospital bomber, Emad al-Swealmeen.
17. The Home Office told the Commissioner:

"Both requests were for an asylum/immigration file, both individuals claimed to be converts to Christianity and both are deceased".

18. The Commissioner considered the Home Office's handling of that request in case reference IC-183309-R8S3, issuing a decision notice<sup>2</sup> on 12 April 2023.
19. While the Home Office confirmed that each case is considered individually on its merits and the nature of the specific information, it told the Commissioner that, given the similar nature of the requested information, it would use similar arguments for applying the exemptions in this case.
20. It also confirmed that the Home Office is citing multiple exemptions in this case, with the exemptions applied to various parts of the information such that no one exemption covers all the withheld information.
21. The analysis below considers the Home Office's application of sections 31(1)(e), 38(1)(a) and (b), 40(2) and 41(1) to the withheld information. The Commissioner has viewed the information.

## Reasons for decision

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### Section 41 information provided in confidence

22. Section 41 sets out an exemption from the right to know where the information was provided to the public authority in confidence.
23. Information will be covered by section 41 if:
  - it was obtained by the authority from any other person,
  - its disclosure would constitute a breach of confidence,
  - a legal person could bring a court action for that breach of confidence, and
  - that court action would be likely to succeed.
24. In this case, the Home Office told the complainant:

“Evidence submitted by asylum claimants is submitted in the understanding that it will be treated in confidence”.

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024917/ic-183309-r8s3.pdf>

25. It further explained that it was satisfied, with respect to its application of section 41(1):

“... when Mr Ezedi and his associates submitted information to the Home Office, it was submitted in confidence”.

26. In that respect, the Home Office told the Commissioner:

“Paragraph 339IA of the Immigration Rules states that information provided in support of an asylum application and the fact that an application has been made shall not be disclosed to ‘the alleged actor(s) of persecution of the applicant’. Information relating to an asylum application is provided to the Home Office as part of the application process in confidence, due to the nature of an asylum claim in general. The fact that in this case the applicant is deceased does not, in our view, affect the fact that information relating to the application was provided in confidence”.

27. It also explained that the file contains much information provided to the Home Office from outside sources relating to the applicant.

28. It told the Commissioner:

“That this information was provided in confidence and has the quality of confidence is, we would submit, self-evident from the nature of the information and the nature of the process to which it relates”.

29. In its submission to the Commissioner, the Home Office referred to the Commissioner’s guidance on section 41<sup>3</sup>, where it states:

“In certain circumstances, the duty of confidence owed to a living individual will continue after their death”.

30. The Home Office told the Commissioner that it considers, in this case, that the duty of confidentiality applies primarily to the providers of the information. It went on to say:

“However, in light of the above guidance and the nature of the information a continuing duty of confidentiality to Mr Ezedi cannot entirely be discounted”.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

31. Having considered the information withheld by virtue of section 41, the Commissioner is satisfied that the information meets the criteria set out above. He has reached that conclusion on the basis that the information was obtained from another person, has the necessary quality of confidence, was imparted in circumstances importing an obligation of confidence, and that disclosure would be an unauthorised use of the information to the detriment of the confider.
32. He also accepts that the duty of confidence continues to apply after the death of the person concerned. This is in accordance with the Information Tribunal hearing of *Pauline Bluck v Information Commissioner and Epsom & St Helier University Hospitals NHS Trust* (EA/2006/0090).
33. Having considered the arguments put forward by the Home Office, and taken account of his guidance on section 41, the Commissioner is satisfied that the four parts of the test for engaging section 41 are made out.
34. Section 41 is an absolute exemption, so there is no public interest test to be carried out under FOIA.
35. However, the common law duty of confidence contains an inherent public interest test. With regard to section 41(1), this test is whether there is a public interest in disclosure which overrides the competing public interest in maintaining the duty of confidence.
36. The complainant considers that there is a legitimate interest in understanding the events that led up to the chemical attack and suicide.
37. The Home Office told the Commissioner it sees little, or no, public interest in disclosure of the information about Mr Ezedi that was provided in confidence, arguing that it does not further public understanding or accountability.
38. In contrast, in the circumstances of the case, it considered there were strong arguments in favour of maintaining the confidence, in terms of the wider public interest in preserving the principle of confidentiality, the impact of disclosure on the interests of the confider and maintaining the principle of confidentiality in the context of an asylum application.
39. It argued that individuals and organisations may be discouraged from confiding in public authorities "if they do not have a degree of certainty that this trust will be respected".
40. In weighing the above public interest arguments for and against disclosure, the Commissioner has taken account of the wider public interest in preserving the principle of confidentiality. He is mindful of the need to protect the relationship of trust between confider and confidant

and not to discourage, or otherwise hamper, a degree of public certainty that such confidences will be respected by a public authority.

41. Having considered all the circumstances of this case, the Commissioner has concluded that there is a stronger public interest in maintaining the obligation of confidence than in disclosing the information.
42. Therefore the Commissioner finds that the information was correctly withheld under section 41(1) of FOIA.
43. He has next considered the Home Office's application of section 31 to the information withheld by virtue of that exemption.

### **Section 31 law enforcement**

44. Section 31 of FOIA provides a prejudice based exemption which protects a variety of law enforcement interests. In this case, the Home Office is citing section 31(1)(e), on the basis that disclosure would prejudice the operation of the immigration controls.
45. Consideration of section 31(1)(e) is a two-stage process: even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
46. The Commissioner is limited in what he is able to say about the arguments put forward by the Home Office in support of its application of this exemption, without disclosing the nature of the withheld information. However, he accepts that, if disclosed, potential claimants could deduce from the arguments, what type of evidence is required to bolster an asylum claim based on a claim of Christian conversion.
47. The Home Office argued that disclosure would prejudice the operation of immigration controls, because it would assist someone "who might wish to make a false claim on these grounds" in an attempt to evade immigration controls.
48. The Commissioner is satisfied that the arguments provided relate to the interest protected by section 31(1)(e).
49. With regard to the likelihood of that harm actually occurring, the Home Office cited the higher level – would occur.
50. The Commissioner accepts that the requested information would be useful to those intent on evading immigration controls. Such actions would clearly be prejudicial to law enforcement.

## **The public interest test**

51. The Home Office recognises that disclosure of the information withheld by virtue of section 31 could promote public confidence in the operation of its immigration controls. Specifically, it accepted that disclosure could promote public confidence in the way the Home Office carries out its work, in particular with reference to the systems in place for verifying applications made by asylum seekers.
52. With reference to the context of the request, the complainant argued that chemical attacks on the public, and violence against women, are of the highest public interest.
53. The complainant also told the Home Office that there is "legitimate interest in fake conversions to defraud the asylum system".
54. In contrast, the Home Office argued that a legitimate public interest in the issue of fake conversion:

"... does not necessarily imply a public interest in disclosure of information about previous claims and the way they were assessed which might enable someone to 'game the system' and make a fake claim more convincing".
55. The Home Office argued that the public interest lies in not disclosing information which would make fake claims easier.
56. In reaching a view in this case, the Commissioner accepts that it is important for the general public to have confidence in the UK's law enforcement capabilities in connection with its immigration control systems. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
57. However, he also recognises that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – that is, the public interest in avoiding prejudice to the operation of the immigration controls.
58. In the context of this case, the Commissioner recognises the public interest in preventing individuals intending to circumvent immigration controls from having access to information which could assist them in building a picture of how they can best achieve their aims.
59. Having considered the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of disclosure do not equal or outweigh those in favour of maintaining the exemption.



Accordingly, the Commissioner is satisfied that section 31(1)(e) of FOIA was appropriately applied in this case.

### **Section 38 health and safety**

60. The Commissioner's guidance 'Section 38 - Health and Safety'<sup>4</sup> recognises that section 38(1)(a) focuses on endangerment to any individual's physical or mental health while section 38(1)(b) focuses on endangerment to the safety of any individual.
61. The Home Office acknowledges that the whereabouts and circumstances of Mr Ezedi's living relatives are uncertain. However, it argued that it has a duty to err on the side of caution in considering disclosure of personal data of living relatives given the circumstances of this case.
62. For the same reasons as in the case referred to by the Home Office, IC-183309-R8S3, the Commissioner accepts that the exemptions at sections 38(1)(a) and (b) are engaged with regard to the withheld information in this case. He is satisfied that there is a causal relationship between the disclosure of that information and the harm that sections 38(1)(a) and (b) are designed to protect. He also accepts that disclosure would be likely to endanger the physical or mental health of relatives or associates of the deceased.

### **The public interest test**

63. Section 38 is a qualified exemption. This means that, even if the exemption is engaged, the public authority must go on to consider whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.
64. As in IC-183309-R8S3, the Commissioner must take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the world at large, without conditions. The wider public interest issues must therefore be considered when deciding whether or not the information requested is suitable for disclosure.
65. Having weighed the risks to the health and safety of individuals associated with Mr Ezedi against the public interest in disclosure, the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

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<sup>4</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

## **Section 40 personal information**

66. Section 40(2) provides an exemption for information that is 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.
67. Section 3(2) of the Data Protection Act 2018 defines personal data as:  
    "any information relating to an identified or identifiable living individual."
68. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
69. The Home Office told the complainant that information was withheld under section 40(2) because of the condition at section 40(3A)(a).
70. It is accepted that, as the individual named in the request is deceased, section 40 does not apply to their information.
71. Having seen a copy of the withheld information, the Commissioner accepts that the information withheld by virtue of section 40 includes details of individuals other than the individual named in the request, including Home Office officials. That information includes names, contact details and photographs.
72. The Commissioner is satisfied that the requested information is personal data as the information relates to and identifies these living individuals.
73. The Commissioner considers that the arguments put forward by the Home Office for withholding the information in this case are the same as those used in case reference IC-183309-R8S3.
74. The Commissioner's decision in that case was that the Home Office correctly applied section 40(3A)(a).
75. Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between this case and IC-183309-R8S3 is such that he is able to reach the same decision about disclosure without the need for further analysis.
76. The Commissioner has therefore decided that the Home Office was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

## **Other matters**

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77. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA which suggests that internal reviews should be responded to within 20 working days, and, if complex, it is best practice for any extension to be no longer than a further 20 working days.
78. The complainant's concern about the timeliness of the internal review will be logged for monitoring purposes.

## **Right of appeal**

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79. 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: 0203 936 8963

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)

80. 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.

81. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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