

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 October 2011

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

#### Decision (including any steps ordered)

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1. The complainant requested information about specific, named, customers of the General Register Office certificate ordering service.
2. The Commissioner's decision is that the Home Office was correct neither to confirm nor deny holding information within the scope of the request.
3. The Commissioner does not require the Home Office to take any further action.

#### Request and response

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4. The General Register Office (GRO) holds birth, adoption, marriage, civil partnership and death records. On 23 March 2011 the complainant wrote to the GRO and requested information in the following terms:

*"I request to know the following information.*

*1. Since the establishment of the secure customer relationship management record ordering system, how many any [sic] applications for birth certificates have been made by a Mr [name and address redacted], and what were the dates when made?*

*2. Since the establishment of the secure customer relationship management record ordering system, how many any [sic] applications for birth certificates have been made by a Mr [name and address redacted] and/or [name redacted], and what were the dates when made?"*

5. The Identity and Passport Service, an executive agency of the Home Office, responded on 20 April 2011. It stated that in accordance with section 40(5) of FOIA (personal information) it could neither confirm nor deny holding information within the scope of the request. The complainant was advised that if he was not satisfied with this response, he could ask the Home Office to conduct an independent review.
6. Following that review the Home Office wrote to the complainant on 2 June 2011. It stated that it was upholding the decision to neither confirm nor deny holding any information about whether the two individuals named in the request had ordered birth certificates.

### **Scope of the case**

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7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He told the Information Commissioner:

*"I don't accept that withholding this information relating to the names of the individuals concerned was justified as constituting 'personal information' as there has been insufficient information provided ... to justify why any or all of the 'Data Protection Principles' would be contravened".*

8. He also said:

*"in view of the fact that I have requested the information in connection with myself, I don't accept that confidentiality should attach to their identities."*

9. The complainant also told the Information Commissioner:

*"I don't accept that the application of the neither confirm nor deny response .... was correct.....I also don't accept that it is acceptable to adopt a policy of neither confirming or denying the additional information sought".*

10. Having considered the wording of the request, which clearly identifies two named individuals, the Information Commissioner considers the focus of his investigation to be with respect to *"the additional information sought"*. The scope of his investigation has therefore been with respect to the Home Office neither confirming nor denying whether it held information about applications for birth certificates made by the named individuals.

## Reasons for decision

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11. Generally, the provisions of section 40(1) to (4) exempt 'personal data' from disclosure under FOIA if to do so would breach the data protection principles.
12. Section 40(5) further excludes a public authority from complying with the duty imposed by section 1(1)(a) (that is, to either confirm or deny holding the information), if complying with that duty would:
  - constitute a disclosure of personal data, and
  - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act (DPA).

*Would confirming or denying that the requested information is held constitute a disclosure of personal data?*

13. The DPA defines personal information as:

*"...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,  
and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

14. The Information Commissioner considers that the way in which the request in this case is worded, including the provision of names and addresses, clearly indicates that the complainant is seeking information which can be linked with named individuals. He considers that to comply with section 1(1)(a) of FOIA would inevitably put into the public domain information about whether either of the individuals named in the request has or has not applied to the GRO for birth certificates.
15. The Information Commissioner is of the view that any information as to whether or not applications were made would constitute the personal data of the individuals involved.
16. Therefore, the Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.

*Would disclosure of this personal data breach a data protection principle?*

17. The first data protection principle states that:

*"Personal data shall be processed fairly and lawfully..."*

18. The information requested in this case was about the number of applications named individuals had made for birth certificates and the dates when any such applications were made.

19. In determining whether disclosure in this case is fair, the Information Commissioner has considered whether the consent of the named individuals has been sought in relation to this request. He notes that there is no obligation on a public authority to seek the data subject's consent to disclosure. However, he considers it good practice to inform the data subjects that a request for access to information about them has been made and to take any objections into account. In this case, the Information Commissioner is not aware of anything to suggest that consent has been given.

20. When considering the concept of fairness, the Information Commissioner's view is that it is relevant to take into account the individuals' reasonable expectations of what would happen to their personal data. In this respect, the Home Office told the Information Commissioner:

*"In general, someone who applies to the GRO for birth or death certificate information has a reasonable expectation that information about their application, including the fact of their having made it, will not be made public"*

21. The Information Commissioner has also taken into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions, and not to the individual applicant. In other words, if information were to be disclosed it would, in principle, be available to any member of the public. A confirmation or denial in the circumstances of this case could reveal to the public information which is not already in the public domain and is not reasonably accessible to the general public.

22. The Home Office acknowledged that, when requesting an internal review, the complainant said that he was requesting the information in connection with himself. In response, the Home Office referred the complainant to its advice in relation to a previous request in which:

*"it was established that the recipient must provide legitimate grounds relating to his or her particular situation"*

23. In the absence of such evidence in this case, the Home Office argued that it did not find:

*"any convincing argument which demonstrates the necessity for the personal data, if held, to be transferred to him".*

24. The complainant was more specific when bringing this matter to the Information Commissioner's attention, saying that he had made his request to establish whether either or both of the named individuals had applied to the GRO for a copy of his birth certificate. However, the complainant did not provide any further information about why this information was of interest to him.
25. Whilst recognising the complainant's personal interest in the request, in reaching his decision in this case the Information Commissioner has considered whether or not it is appropriate for the information to be released to the general public.
26. During the course of his investigation, the Information Commissioner was advised that the GRO's electronic ordering database *"is constructed around customers rather than the particular entry ordered"*. In the circumstances, the Information Commissioner considers that any information, if held, is likely to be the personal information of multiple data subjects with the data inextricably linked.
27. The Commissioner has considered the terms of the complainant's request for information and is satisfied that the information the complainant seeks, would, if held, amount to personal information. He is also satisfied that to confirm or deny in this case would be to disclose information about the actions, or absence of actions, of the named individuals. In his view, this would be unfair to the individuals concerned and would contravene the first principle of the DPA.
28. Having reached this conclusion, the Information Commissioner has not found it necessary to consider whether disclosure would be lawful or whether one of the Schedule 2 DPA conditions would be met. However, he considers it likely that no Schedule 2 condition would be met.
29. As section 40 is an absolute exemption there is no need to consider the public interest in disclosure separately.

## Right of appeal

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30. 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: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

31. 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.
32. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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