

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 February 2024

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

Decision (including any steps ordered)

1. The complainant made a two part request for information relating to asylum seekers who have died in Home Office accommodation between 1 January 2023 and 1 June 2023. The Home Office provided all information in relation to part one of the request but only provided partial disclosure in relation to part two, relying on section 38(1)(a) and section 38(1)(b) of the FOIA to withhold some of the information.
2. The Commissioner's decision is that the Home Office was not entitled to rely on section 38(1)(a) of FOIA to withhold the remaining information at part two of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose all the information at part two of the request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 19 November 2021, the complainant wrote to the Home Office and requested information in the following terms:
 - "1) The number of asylum seekers who have died in Home Office accommodation between 1 January 2023 to 30 June 2023.
 - 2) For each death, please include the cause and location of death (or the region, their ages, nationalities, and gender."
6. The Home Office responded on 17 July 2023. It provided all information in regards to part one of the request and some of the information in regards to part two of the request. The remaining information in regards to part two of the request was withheld under section 38(1)(a) and (b) of FOIA.
7. Following an internal review the Home Office wrote to the complainant on 6 October 2023 maintaining its original position.

Scope of the case

8. The complainant contacted the Commissioner on 15 October 2023 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation, the Home Office confirmed that it no longer wished to rely on section 38(1)(b) and was solely relying on section 38(1)(a) of the FOIA to withhold the remaining information at part two of the request.
10. The Commissioner considers that the scope of his investigation is to decide whether the Home Office correctly engaged section 38(1)(a) of the FOIA.

Reasons for decision

Section 38 – health and safety

11. Section 38 of FOIA states:
 - (1) Information is exempt information if its disclosure under this Act would be likely to –
 - (a) Endanger the physical or mental health of any individual...

12. The Home Office stated that disclosure under the FOIA is in effect to the world at large and it submits that disclosing the additional details requested, namely the age, nationality and gender of each deceased asylum seeker would identify the individual with a reasonable degree of probability to anyone who might be familiar with them and who has access to other information in the public domain.
13. The Home Office argued that if it was to consider information about living individuals, in the context of section 40(2) of the FOIA (personal data), information that someone is an asylum seeker held in a particular region, together with their age, nationality and gender, would almost certainly be regarded as personal data because it in effect identifies the individual, whether directly or indirectly.
14. The Home Office also referred to Commissioner's guidance¹ on section 38 which says that information that might pose a risk, if disclosed, could be information about (among other things):

“someone who has died (and is therefore not covered by the personal information exemption) where disclosure might endanger the mental health of surviving relative, particularly if they have been unaware of it;”
15. The Home Office explained that it therefore believes it is possible that living relatives or others previously close to the deceased individuals would learn of their deaths through disclosure of this information. The Home Office stated that it considers that this is a real and significant risk, albeit a risk that probably falls short of being more probable than not, so the limb on which it relies is 'would be likely'.
16. The Home Office explained to the Commissioner that when an asylum seeker dies in Home Office accommodation, unless there is a surviving dependant on the Asylum Support package it is not standard Home Office practice to locate or attempt to contact a next of kin. It argued that the risk that relatives might find out through disclosure of the requested information, particularly if they know that the deceased individual was an asylum seeker, is therefore significant.
17. The Home Office explained that the period covered by the request is recent and if family members or others were previously unaware of an individual's death, disclosure carries a risk of endangering the mental or physical health of those family members upon becoming aware. The

¹ [Section 38 – Health and safety | ICO](#)

Home Office argued that it should not disclose any information that may compromise the health and safety of any individual.

18. The Home Office stated that it is difficult to demonstrate a causal link in this case because it cannot point to any specific individual or individuals whose health would be likely to be endangered. It also does not consider that the risk of identification of the accommodation address is 'real and significant', given the level of detail requested, as is the possibility that living relatives will be unaware of the death, given that the Home Office does not normally contact the next of kin.
19. In his complaint to the Commissioner, the complainant argued that he had previously made similar requests to the Home Office and had been provided with the information requested.
20. The Home Office explained that a reconsideration of the Department's handling of High Profile Notifications, in relation to asylum seekers and related requests made under the FOIA took place in Spring 2023 and that this included a review of requests relating to deaths of asylum seekers. It explained that a decision was made to adopt a more risk-based approach to the disclosure of additional "identifier" information in relation to deceased persons, based on legal advice and advice from information rights practitioners.
21. The Home Office explained that each request is still considered individually on its merits but it does not disclose detailed information about deceased asylum seekers, from which they could be identified, as a matter of course, as might previously have been the case.

The Commissioner's conclusion

22. To engage section 38, the Home Office needs to demonstrate a causal relationship between the disclosure of the withheld information and the endangerment to the physical or mental health of any individual. The alleged endangerment must be real, actual or of substance.
23. The Home Office must also show that disclosure of the withheld information in this case would be likely to have a detrimental effect on the physical or mental health of any individual. This means that it must have a greater impact than causing upset and distress.
24. The Commissioner has viewed the withheld information and although he recognises that a relative or others previously close to the deceased may speculate that the information relates to them, the Commissioner cannot see how the deceased individuals would be identified with absolute certainty.

25. The Home Office has claimed that other information in the public domain may identify the deceased. The Commissioner has not been provided, however, with any evidence or presented with any argument to how or what information in the public domain may help to identify the deceased individual.
26. The Commissioner's guidance states that public authorities must show that disclosure would or would be likely to have a detrimental effect on the physical or mental health of any individual. The effect cannot be trivial or insignificant. In the context of section 38, even if the risk falls short of being more probable than not, it needs to be such that there may very well be endangerment.
27. Whilst the Commissioner accepts that an individual may wonder whether one of the deceased individuals listed by the Home Office relates to someone they know, he cannot see how the risk of endangerment to any individual's physical or mental health would be a greater impact than causing upset and distress.
28. It is therefore the Commissioner's opinion that he has not been provided with sufficient information that demonstrates how the release of the withheld information would be likely to have a detrimental effect on the physical or mental health of any individual.
29. The Commissioner is aware that the Home Office has previously disclosed deaths relating to asylum seekers in Home Office accommodation to the complainant. The Commissioner would expect that, were there any realistic risk of endangerment to any individual's physical or mental health, the Home Office would have been able to evidence this after that information had been disclosed. No actual evidence of any endangerment resulting from previous disclosure has been presented to the Commissioner.
30. The Commissioner is therefore not persuaded that the Home Office's arguments are sufficient to demonstrate a causal relationship between the endangerment to the physical or mental health of any individual and the disclosure of the requested information. He therefore finds that section 38(1)(a) of the FOIA is not engaged and the withheld information should be disclosed.
31. As the Commissioner has decided that the exemption is not engaged he has not gone on to consider the public interest in this matter.

Right of appeal

32. 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

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

33. 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.
34. 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

Robyn Seery
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF