

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 25 November 2008

Public Authority: The Office for National Statistics
Address: 4200E Segensworth Road
Titchfield
Fareham
Hampshire

Summary

The complainant requested information from the Office for National Statistics (the 'ONS') relating to the 1921 census return. The ONS withheld the requested information, relying on the exemptions under sections 44(1)(a) and 22(1)(a) of the Freedom of Information Act (the 'Act'). The Commissioner's decision is that the ONS has correctly applied the section 44(1)(a) exemption. The Commissioner does not therefore require the ONS to take any steps in relation to this request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000. This Notice sets out his decision.

The Request

2. The complainant has advised the Commissioner that on 27 April 2007 she requested the following information ('the requested information') from the ONS under section 1 of the Act:

“... a copy of the record from the 1921 census for 14 C Row, Forgeside, Blaenafon, South Wales.”

3. On 30 April 2007, the complainant was advised by the ONS that the requested information was exempt by virtue of sections 44(1)(a) and 22(1)(a) of the Act. Section 44(1)(a) exempts information if disclosure is prohibited by other legislation. Section 22(1)(a) exempts information if it is intended for future publication.

4. The ONS advised the complainant that the 1921 census was taken under the terms of the Census Act 1920 (the Census Act). Section 8(2) of the Census Act specifies that if the Registrar General, or any person under his control or supplying services to him, discloses any personal census information to another person without lawful authority, he is guilty of an offence. The ONS was of the view that this provision constituted a statutory prohibition on disclosure, and therefore the requested information was exempt under section 44(1)(a) of the Act.
5. The ONS also advised the complainant that the Government intended to publish the 1921 census in 2022. The ONS had concluded, therefore that it was exempt under section 22(1)(a) and that the balance of the public interest lay in withholding the requested information until the due date.
6. The complainant was dissatisfied with this response, and on 30 April 2007 she advised the ONS of her intention to complain to the Commissioner. The ONS advised the complainant that she ought to request an internal review before approaching the Commissioner, and the complainant accordingly requested a review.
7. On 10 May 2007 the ONS informed the complainant that it had now completed the internal review. The ONS advised that it had reconsidered its response, and had concluded that it had properly withheld the requested information.

The Investigation

Scope of the case

8. On 28 May 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant claimed to the Commissioner that the ONS had incorrectly withheld the requested information from her.
9. The Commissioner wrote to the complainant on 26 September 2007 to advise that he was of the preliminary view that the requested information was in fact exempt under section 44(1)(a) of the Act. This view was informed by the fact that the Commissioner was at that time considering another request in relation to the 1921 census.¹ As part of this investigation the Commissioner had undertaken substantial legal research into the statutory bar provided by the Census Act. Therefore the Commissioner asked the complainant whether she would consider withdrawing her complaint.
10. The complainant advised the Commissioner on 27 September 2007 that she did not wish to withdraw her complaint. The complainant requested that the Commissioner proceed to a formal decision in the case.

¹ Case reference FS50147944. This Decision Notice upheld the ONS's reliance on the exemption under section 44(1) of the Act.

Chronology

11. As the Commissioner had already undertaken research into the Census Act he did not require further information from the ONS's application of the exemptions. However, the Commissioner did request a copy of the withheld information in this case, which the ONS provided on 1 October 2007.

Findings of fact

12. The collection of 1921 decennial population census information was undertaken by officers of the Registrar General who gathered information from the head of each relevant household. The Commissioner has had sight of the requested information and notes that the 1921 census schedule is marked "Strictly Confidential".
13. The ONS has advised the Commissioner of its intention to release the entirety of the 1921 census returns in 2022, in accordance with the non-statutory '100 year rule' which was adopted to reflect this undertaking of confidentiality. The practice of employing the 100 year rule has been in place for the census since 1962 (for the 1861 census). Since 1981 the Registrar General has assured the public that census information will be held in confidence for 100 years. The ONS has advised the Commissioner that, in its view, response rates for future census returns will be adversely affected if it fails to honour this pledge.
14. The requested information relates to members of the complainant's family. Although not relevant for the purposes of the Act, the complainant has confirmed to the Commissioner that she is seeking this information for genealogical reasons, ie to complete a family tree.
15. In relation to the requested information, the census schedule contains information comprising the names of the individuals, their relationship to the head of the household, age, sex, occupation, marital status, places of birth and nationality, as well as details of their places of work.
16. The Commissioner is aware that the name, age and marital status of individuals is generally available to the public through researching the registers of births, deaths and marriages, although the names of persons who were born, married or died outside the UK would not appear in such registers.

Analysis

17. The Commissioner is mindful of the fact that the Information Tribunal recently considered the issue of the statutory prohibition on disclosure under the Census Act in relation to the 1921 census return². In this case the Tribunal found that information obtained as part of the 1921 census was in fact prohibited from

² Appeal no EA/2007/0112, Barrett v ICO and ONS

disclosure by section 8(2) of the Census Act. The Tribunal found therefore that the requested information was “not disclosable regardless of any public interest there may be in disclosure”.

18. The Commissioner has adopted the Tribunal's approach in relation to complaints regarding requests for 1921 census information. Therefore the Commissioner has considered the requested information in this particular case, and whether it also falls within the scope of the Census Act 1920.

Section 44: information prohibited from disclosure

19. Information is exempt by virtue of section 44(1)(a) of the Act if its disclosure (otherwise than under the Act) is prohibited by or under any enactment. Section 44 is also an absolute exemption. Therefore, if the Commissioner is satisfied that that section 44 is engaged he is not required to consider the public interest test.
20. The Commissioner has had sight of the requested information which comprises the census schedule for 14 C Row. Having examined that schedule he is also satisfied that it was collected by the servant or agent of the Registrar General in the course of carrying out a census.

The statutory bar

21. Section 8(2) creates an offence in circumstances where the Registrar General for England and Wales, or the Registrar General for Scotland, or any other person (who is under the control of either of the Registrars, or who is a supplier of any services to either of them) discloses any personal census information without lawful authority. The full text of this provision is set out at the legal annex (see page 8).
22. The Commissioner is satisfied that the ONS was a legal person under the control of the Registrar General for England and Wales at the time of the complainant's request, so as to satisfy the first limb of the statutory bar.

Is the requested information personal census information?

23. Census information is defined by section 8(7) of the Census Act 1920, as any information that is collected by the Registrar General in the course of carrying out a census, or which has been acquired under sections 2, 4 or 5 of the Census Act 1920. Personal census information is any census information that relates to an identifiable person or household, whether living or deceased.

Is there lawful authority to disclose the requested information in this case?

24. The requested information is personal census information within the definition in section 8(7) of the Census Act. The Commissioner must consider therefore whether there in this case there is any lawful authority for disclosure of the information.
25. In considering this issue the Commissioner has been assisted by the Information Tribunal's decision in the case of Barrett (see paragraph 17 above). The

Tribunal identified two grounds for disclosure that might constitute lawful authority:

“a) section 2(2) of the Census Act 1920 requires the Registrar-General to comply with any directions given by the Chancellor of the Exchequer and, in theory, he could direct the ONS to release Census information which would amount to lawful authority;

b) a court order, for example under section 17 of the Criminal Appeals Act 1995, might constitute lawful authority”.

26. The Tribunal clarified that consent to disclosure by the subject of census information could not in itself constitute lawful authority. Nor could the Act be used to provide the requisite authority.

27. The Commissioner does not consider that the ONS in this particular case has the lawful authority required to disclose the information. Therefore the Commissioner finds that the statutory bar in section 8(2) of the Census Act applies in this case, and that the ONS is prohibited by that provision from disclosing the requested information.

Other exemptions claimed

28. As the Commissioner is satisfied that the requested information was correctly withheld under section 44 of the Act, he is not required to make a decision in relation to the ONS's application of the exemption under section 22(1).

The Decision

29. The Commissioner's decision is that the ONS dealt with the request for information in accordance with the Act. The Commissioner finds that section 44(1)(a) does apply to the requested information, and it is therefore exempt from disclosure.

Steps Required

30. The Commissioner does not require the public authority to take any steps.

Right of Appeal

31. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 25th day of November 2008

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

2. **Section 22** provides that:

(1) Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

3. **Section 44** provides that:

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

4. **Section 8 of the Census Act 1920** provides that:

1) If any person –

- (a) neglects or refuses to comply with or acts in contravention of any of the provisions of this Act or any Order in Council or regulations made under this Act; or
- (b) being a person required under this Act to make a statutory declaration with respect to the performance of his duties, makes a false declaration; or
- (c) being a person required by an Order in Council or regulations made under this Act to make, sign or deliver any document, makes, signs, or delivers, or causes to be made, signed, or delivered a false document; or

- (d) being a person required in pursuance of any such Order in Council or regulations to answer any question, refuses to answer or gives a false answer to that question;

he shall for each offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

2) If the Registrar-General for England and Wales or the Registrar-General for Scotland ("the Registrars") or any person who is –

- (a) under the control of either of the Registrars; or
- (b) a supplier of any services to either of them, discloses any personal census information to another person, without lawful authority, he shall be guilty of an offence.

(3) If any person discloses to another person any personal census information which he knows has been disclosed in contravention of this Act, he shall be guilty of an offence.