

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

### **Decision notice**

**Date:** 8 July 2014

**Public Authority:** The National Archives  
**Address:** Ruskin Avenue  
Kew  
Richmond  
Surrey  
TW9 4DU

#### **Decision (including any steps ordered)**

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1. The complainant has requested file reference IR 62/2251 which relates to the application for remission of death duties on the estate of a deceased individual who died in Auschwitz. The National Archives refused to disclose the requested information under section 40(2) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the National Archives was correct to apply section 40(2) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 4 March 2014 the complainant made the following request for information under the FOIA:

"I would like to get access to a file which is listed on the National Archives own catalogue as closed.

The file which has the reference IR 62/2251 relates to the application for remission of death duties on the estate of deceased dying in Auschwitz. According to the catalogue the file is held by National Archives."

5. On 11 April 2014 the National Archives responded. It refused to disclose the requested information under section 40(2) FOIA.

6. The complainant requested an internal review on 16 April 2014. The National Archives sent the outcome of its internal review on 19 May 2014. It upheld its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 21 May 2014 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the National Archives is correct when it says it is entitled to rely on section 40(2) FOIA in this case.

## **Reasons for decision**

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9. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
10. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:  
  
"data which relate to a living individual who can be identified –
  - (i) from those data, or
  - (ii) 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."
11. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
12. The National Archives has explained that the information withheld under section 40(2) FOIA relates to the death duties of a soldier who died in Auschwitz and how his personal estate was dealt with after his death. It explained that this includes information about his wife who made the applications and those who would receive bequests

(beneficiaries – i.e. his children). It said that the beneficiaries are deemed to still be living and therefore this document contains personal financial information relating to living and identifiable individuals.

13. The National Archives did consider whether it was possible to redact the names of the beneficiaries however it said that the withheld information predominately relates to the financial information regarding an individual's estate and assets. It said that the estate passes on to beneficiaries and so becomes their personal financial information. It suggested that in the ICO case reference FS50081722 summarised the situation with this type of information, stating that the ICO recognises that in some circumstances the information about a deceased person can become information relating to a living person:

*27. "there are cases in which the information about the deceased person forms part of the information about a living person and, as a result, the living person may be identified from the information and that information can also be said to relate to that living person. In those cases, the Commissioner considers that such information is the personal data of living individuals."*

In reference to redacting the names of personal representatives the ICO also highlighted in this same case:

*31. The Commissioner considers that even if the names were to be redacted, members of the public could still identify the personal representatives either through the family of the deceased or through the Probate Registry."*

14. It did also clarify that the information had not been withheld solely for the protection of the names, of the data subjects but to protect the personal and confidential financial information it holds in relation to living and identifiable individuals.
15. Upon viewing the contents of the withheld information the Commissioner does consider it to be the personal data of any living beneficiaries.
16. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be

processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met. In addition for sensitive personal data at least one of the conditions in Schedule 3 should be met.

### **Likely expectation of the data subject**

17. The National Archives explained that disclosing details of an individual's inheritance would be unfair, as this data was collected for a specific purpose, relating to tax liability and bequests. When providing information for this purpose an individual would have an expectation of confidence and to release it would be at odds with how the information was obtained. Furthermore it said that the manner in which it was collected and intended purpose makes it highly personal in nature and as a result there would be a legitimate expectation from the beneficiaries that their personal tax information would not be released into the public domain during their lifetimes.
18. It went on to argue that there is a general understanding that information provided to HMRC comes with an expectation of confidence and that HMRC has a duty to protect this information.
19. The Commissioner accepts that the information was obtained by HMRC from the personal representative of the deceased's estate for a very specific purpose and the data subjects (the beneficiaries of the estate) would not have an expectation that the information would be disclosed into the public domain.

### **Damage and distress**

20. The National Archives has argued that disclosure of the withheld information would cause damage and distress to the data subjects. It has not however explained what damage and distress would be caused or why this would occur.

### **The legitimate public interest**

21. The National Archives referenced Tribunal case EA/2012/0030 which highlighted that "A broad concept of protecting, from unfair or unjustified disclosure, the individuals whose personal data has been requested is a thread that runs through the data protection principle, including the determination of what is "necessary" for the purpose of identifying a legitimate interest. In order to qualify as being "necessary" there must be a pressing social need for it..." And if a public or legitimate interest does exist this must be balanced against

the rights, freedoms and legitimate interests of the individuals whose information is sought”.

22. It said that in this instance, it does not consider that there is a pressing social need for this information that outweighs the public interest in protecting this information. It acknowledged that the release of this material would add to the historical account, however while the information remains personal data of living individuals, this addition to the public knowledge does not outweigh the public interest in protecting this data and the rights and freedoms of the individuals involved.
23. It argued that it is required to uphold the rights of living individuals where their personal information has been provided for the process of assessing death duties and for their claims to the deceased estate. It said that the National Archives has to observe its obligations to these living individuals and their rights under the Data Protection Act. It summarised that the rights and interests of these individuals may be impacted by this release as it is not something the National Archives considers the data subjects would have contemplated.
24. The Commissioner considers that the requested information was provided by the personal representative of the estate for a specified purpose. The Commissioner does not consider that the data subjects would have an expectation that this information would be disclosed into the public domain. The Commissioner also considers that if certain information were redacted such as the names of the beneficiaries it is highly likely they would still be identifiable through other information contained within the requested file. Whilst the Commissioner also acknowledges that there is a legitimate public interest in disclosing information which would add to the historical account and further public knowledge, he does not consider that this outweighs the interests of the data subjects in this context.
25. The Commissioner therefore considers that section 40(2) FOIA was correctly applied in this case to the withheld information.

## **Right of appeal**

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26. 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:

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**