

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2015

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

Decision (including any steps ordered)

1. The complainant requested templates of letters used to inform applicants whether their immigration application has been successful. The Home Office refused to disclose these templates and cited the exemption provided by section 31(1)(e) (prejudice to the operation of the immigration controls) of the FOIA.
2. The Commissioner's decision is that the Home Office cited this exemption correctly and so it was not obliged to disclose this information.

Request and response

3. On 29 September 2014 the complainant wrote to the Home Office and requested information in the following terms:

"Please provide the full content of all templates used by immigration officials pertaining to:

(a) Informing an applicant that their immigration application has been refused.

(b) Informing an applicant that their immigration application has been granted. For the purposes of this request 'immigration application' means any application for a visa of any type, an application to extend a visa of any type, an application for leave to remain in the UK of any type and an application for Asylum in the United Kingdom."

4. The Home Office responded on 21 October 2014 and refused the request, relying on the exemptions provided by sections 24(1) (national security) and 31(1)(e) (prejudice to the operation of the immigration controls) of the FOIA.
5. The complainant responded on the same date and asked the Home Office to carry out an internal review of its refusal of his information request. After a very lengthy delay and only following the intervention of the Commissioner, the Home Office responded with the outcome of the internal review on 12 February 2015. The refusal to disclose the requested information was upheld, but the Home Office withdrew the citing of section 24(1) and now relied only on section 31(1)(e).

Scope of the case

6. The complainant contacted the Commissioner initially on 17 December 2014, prior to the completion of the internal review, to complain about the refusal of his information request. The complainant argued that the information he had requested should be disclosed and raised the issue of the poor quality of the refusal notice, which is commented on in the "Other matters" section below.
7. Owing to the delay up until that point in the completion of the review, the complaint was accepted at that time without waiting for the Home Office to complete the review. Following contact from the ICO, the Home Office completed the internal review and responded to the complainant confirming that it now relied only on section 31(1)(e), which is the exemption covered in the analysis below.

Reasons for decision

Section 31

8. The Home Office cited the exemption provided by section 31(1)(e) of the FOIA. This section provides an exemption for information the disclosure of which would, or would be likely to, prejudice the operation of the immigration controls. Consideration of this section involves two stages; first the exemption must be engaged as a result of prejudice relevant to the exemption being at least likely to result. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of this exemption does not outweigh the public interest in disclosure.

9. Covering first whether this exemption is engaged, the Home Office has specified that it believes that prejudice *would* result, rather than *would be likely* to result. For the Commissioner to accept that prejudice would result, the likelihood of this must be more probable than not. The question here is, therefore, whether disclosure of the information in question would be more probable than not to prejudice the operation of the immigration controls.
10. As suggested by the wording of the request, the information falling within the scope of it consists of a number of templates that are used to inform whether an immigration application has been successful. The Home Office identified 41 templates within the scope of the request and supplied copies of these to the ICO. Its position is that disclosure of these would assist in attempts to commit immigration fraud.
11. The Commissioner accepts first that this argument is relevant to the prejudice described in section 31(1)(e). The next step is to consider whether that prejudice is more likely than not to occur.
12. The Home Office supplied to the ICO copies of the withheld templates. It acknowledged that at least some of this information has been disclosed previously by virtue of these templates having been used as the basis for responses sent to individuals, but argued that responses based on the templates being sent to individuals is not comparable to the complete set of 41 templates being disclosed into the public domain.
13. Having viewed the content of the withheld information, the Commissioner agrees with the reasoning of the Home Office on this point. The level of detail that would be placed in the public domain through disclosure of the 41 templates is clearly additional to that which has already been disclosed through letters based on these templates having been sent to applicants. Developing a similarly detailed picture of all the templates through collating copies of letters based on these templates that have been sent to applicants would be extremely difficult, perhaps impossible.
14. The Commissioner also recognises that there are people engaged in immigration fraud who may attempt to use disclosed templates to assist in this activity. Furthermore, he considers it clear that disclosure would assist any individual seeking to create fraudulent letters based upon these templates, which would in turn assist in attempts to commit immigration fraud.
15. For these reasons, the Commissioner agrees with the reasoning advanced by the Home Office as to why prejudice to the operation of the immigration controls would be more likely than not to occur as a result

of disclosure of these 41 template letters. His conclusion is, therefore, that the exemption provided by section 31(1)(e) of the FOIA is engaged.

16. Having found that the exemption is engaged, the next step is to consider the balance of the public interest. In forming a conclusion here the Commissioner has taken into account the general public interest in transparency in relation to recorded information held by the Home Office and the public interest inherent in the exemption, which is the public interest in avoiding prejudice to the operation of the immigration controls. This is in addition to the specific factors that apply in relation to the information in question here.
17. Covering first factors in favour of disclosure, that the information in question relates to immigration is significant. This is perennially an issue of very significant public interest and is currently at the top of the political agenda. In particular, the information in question here relates to efforts to regulate immigration. The subject matter of this information does, therefore, contribute to the public interest in its disclosure.
18. However, the Commissioner is also of the view that the weight of this public interest is somewhat reduced due to the content of this information. Whilst it relates to immigration, the content is on relatively minor, arcane detail. It contains nothing about policy on how to regulate immigration, or about why any specific immigration application may succeed or fail. This information is about the administration of immigration policy, rather than anything on the 'bigger picture' of policy in this area. This means that, whilst the subject matter of this information does indicate public interest in disclosure, this public interest is less acute than would have been the case had this information been more revealing about immigration policy.
19. Turning to factors that favour maintenance of the exemption, the public interest inherent in the exemption is mentioned above. When finding that this exemption was engaged, the Commissioner accepted that prejudice to the operation of the immigration controls would be more likely than not to result through disclosure of the information in question. The Commissioner must give weight to the public interest in avoiding an outcome where prejudice to the operation of the immigration controls would be more likely than not to occur.
20. The public interest in immigration and the control of it is also relevant here. Public concern about controlling the level of immigration is high and there is a correspondingly weighty public interest in avoiding disclosure that would prejudice the operation of the immigration controls.

21. The Commissioner has recognised valid public interest in the disclosure of this information on the grounds that it relates to immigration policy, albeit that the weight of that public interest is lower than may be the case in relation to information that is of more direct relevance to the immigration debate. However, he has also recognised that there is a weighty public interest in avoiding disclosure that would be to the detriment of the immigration controls and his conclusion is that this outweighs the public interest in disclosure. The finding of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so the Home Office was not obliged to disclose this information.

Other matters

22. The Commissioner has two issues to raise here; the poor quality of the refusal notice and the delay in the completion of the internal review.
23. The refusal notice was defective in multiple respects; the arguments it contained had no relationship to the information requested, it referred to information having been disclosed when it had all been withheld and it cited section 31(2) when section 31(1)(e) was the exemption relied upon. The Home Office should take whatever steps are necessary to ensure that there is no repeat of these issues in relation to other information requests.
24. As the Home Office is aware, the approach of the Commissioner is that internal reviews should be completed within a maximum of 40 working days. In this case the internal review took considerably more than 40 working days. The Home Office must ensure that it has appropriate systems in place for internal reviews to be carried out promptly.

Right of appeal

25. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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

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