

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Ben Ingram (reference 12012)

Responding Unit: UK Border Agency

Chronology

Original Fol request:	30 May 2009
Acknowledgement:	01 June 2009
UKBA response:	04 August 2009
Request for internal review:	04 August 2009
Acknowledgment of Internal Review	06 August 2009

Subject of request

1. Mr Ingram asked for information concerning Freedom of Information Requests (FoIR) made by Cassidy, J. The request was in the form of an e-mail sent through the WhatDoTheyKnow.com website and is attached to this review at **Annex A**.

The response by UKBA

2. The United Kingdom Border Agency (UKBA) responded to Mr Ingram's request by e-mail on 04 August, this response is attached at **Annex B**. The UKBA response did not disclose the information requested and relied on an exemption under section 40(3) of the Fol Act.

Mr Ingram's request for an internal review

3. Mr Ingram asked for an internal review of the UKBA response in an e-mail of 04 August, this e-mail is attached at **Annex C**. He did not consider that the UKBA had correctly applied the Data Protection Act. He was of the opinion that as all of J Cassidy's requests have been made through the WhatDoTheyKnow.com website there are no data protection issues.

Procedural issues

4. Mr Ingram's originally e-mailed UKBA on 30 May and this was formally acknowledged as a Freedom of Information Request by e-mail on 01 June. The UKBA response of 04 August 2009 was sent over 40 working days after receipt of the request. This was in excess of the 20 working day limit imposed by section 10(1) of the Fol Act.

Consideration of the response

5. I have considered the UKBA response to Mr Ingram's request.
6. The response, of 04 August, exempted all of the information requested from disclosure under section 40(3) of the FoI Act. However, the response from UKBA failed to say whether the information requested by Mr Ingram was held or not. UKBA stated that disclosure of the requested information would breach the Data Protection Principles but failed to say which of the Data Protection Principles would be breached.

Section 40

7. The Data Protection Principles are set out in Part I of Schedule 1 to the Data Protection Act. In the consideration of the UKBA response the appropriate principle is the first, that personal data be fairly and lawfully processed. In this context processing would include disclosure of the information.
8. Mr Ingram states, in his e-mail of 04 August, that he does not believe that the Data Protection Act has been applied correctly because each request can be viewed on the WhatDoTheyKnow.com website.
9. The decision to make a request through the WhatDoTheyKnow.com website is the choice of the requester, not the responder. A number of requests by J Cassidy, through the WhatDoTheyKnow.com website, are currently outstanding. I am satisfied disclosure of the details of these requests, to Mr Ingram or any other third party, before they have been fully considered and responded to by UKBA would not be fair to J Cassidy.
10. UKBA have a duty to consider if the disclosure of information would be a breach of the Data Protection Act on a case by case basis. In considering this request I am content that UKBA correctly applied the exemption under section 40(3)(a)(i) to responses UKBA had not yet responded to.

Section 21

11. The original response from UKBA to Mr Ingram did not rely on Section 21 of the FoI Act as ground for exempting the disclosure of the requested information. In consideration of the UKBA response it is apparent that this section of the FoI Act should have been relied on when exempting certain information from disclosure.
12. Section 21(1) of the Freedom of Information Act exempts information from the right of access if that information is reasonably accessible to the applicant by other means. If, as is implied in Mr Ingram's request for an internal review, the information requested is on the WhatDoTheyKnow.com website it is already reasonably accessible to him.

13. It is open to Mr Ingram to look through all of the 'postings' by J Cassidy that are already on the WhatDoTheyKnow.com. He will be able to locate the responses from UKBA to J Cassidy's requests for information, which have been completed. I am content that UKBA should have exempted part of the requested information under section 21(1) of the FoI Act, as the information is available to Mr Ingram on the WhatDoTheyKnow.com website.

Conclusion

14. The UKBA response of 04 August was provided to Mr Ingram outside the 20 working day limit and so was in breach of section 10(1) of the FoI Act.

15. The response of 04 August failed to say in respect of the information requested by Mr Ingram, whether the information was held or not. In this respect the response of 04 August was in breach of section 1(1)(a) of the FoI Act.

16. The UKBA response correctly cited section 40 of the FoI act.

17. The UKBA response failed to exempt parts of the information from disclosure under the correct section of the FoI Act. UKBA should have employed section 21 in their original response.

Information Access Team
Home Office
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