



# Home Office

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Mr Peter John  
[request-15620-02b207a4@whatdotheyknow.com](mailto:request-15620-02b207a4@whatdotheyknow.com)

Date: 23 September 2009  
Our Ref: 12563

Dear Mr John,

I am writing further to my correspondence of 21 August 2009, regarding your information request of 31 July 2009. We are now in a position to provide you with a full reply to your request.

I can confirm that the Home Office holds the information that you requested. However I am not obliged to disclose it to you. After careful consideration we have decided that this information is exempt from disclosure by virtue of sections 31(1)(g) with reference to section 31(2)(b), and 36(2)(c) of the Freedom of Information Act. This provides that information can be withheld where disclosure would inhibit the process by which it is ascertained whether any person is responsible for any conduct which is improper and would prejudice the effective conduct of public affairs. Sections 31 and 36 are qualified exemptions and require the conducting of a Public Interest Test (PIT) to balance the considerations in favour of disclosure against those favouring non-disclosure. A detailed PIT can be found in the annex to this response.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting your complaint within two months to the above address quoting reference 12563.

During the independent review the department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

I realise that you may be disappointed with this response. However we have considered the application of exemptions with great care in this case, and the Home Office always seeks to provide as much information as it is able to.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Bragaglia', with a horizontal line above it.

John Bragaglia  
Information Access Consultant

## **Annex**

### **Public Interest Test**

#### *The Exemption*

'31(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)
- (2) The purposes referred to in subsection (1)(g) to (i) are-
  - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.'

#### *Considerations Favouring Disclosure*

There is a general consideration favouring openness and transparency in government. It is generally accepted that government should be as transparent as possible. Releasing information is likely to ensure the public are better informed about issues of concern or general interest. Such an outcome is therefore likely to result in a better quality of debate, which would be clearly beneficial to government and therefore in the wider public interest.

#### *Considerations Favouring Non-Disclosure*

Considerations favouring disclosure must be balanced against those factors favouring non-disclosure. These include the need to ensure that any future investigations in to potential misconduct are not inhibited.

The public has a right to expect that government departments who hold sensitive information do so in a secure manner. The leaking of information is a serious matter. It directly affects the ability of government to fulfil its objectives and undermines public confidence in all respects. When information is leaked it is in the public interest that an investigation in to that matter is conducted, and the culprit/s is/are identified. The release of the information requested would have the effect of inhibiting such investigations in future. Public authorities could be deterred from enlisting the assistance of the police and the CPS in such investigations as a result of the fear that any published decision not to prosecute might lead to the release of the very information the authority was seeking to protect. Such an outcome would clearly have a detrimental impact on the ability of public authorities to carry out investigations and would make the job of protecting sensitive information more difficult.

For these reasons I am satisfied that the public interest in withholding information under this exemption outweighs the public interest in its disclosure.

### *The Exemption*

'36(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

### *Considerations Favouring Disclosure*

As above.

### *Considerations Favouring Non-Disclosure*

The considerations favouring disclosure must however be balanced against those considerations favouring non-disclosure. These include the need to protect the integrity and the effective operation of the Department. Additional considerations include the need to prevent the legitimisation of actions which are damaging to the integrity of the Department and the public's confidence in its work.

The illicit leaking of information affects the smooth operation of the Department and its ability to fulfill its objectives. Indeed, in his decision the Director of Public Prosecutions, Mr Keir Starmer, QC, alludes directly to the damage caused by leaks and this series of leaks in particular:

*'The integrity of the Home Office arrangements for handling restricted and/or confidential information was breached. That caused damage to the proper functioning of the Home Office, which was exacerbated by the prolonged period of the alleged leaks, the on-going relationship between Mr Galley and Mr Green and the sensitivity of the material to which Mr Galley had access.'*

The release of this information would serve to partly legitimise the actions of those involved in the leaking of information. The series of leaks you allude to in your request had the potential to damage the integrity of the Department and its ability to fulfil its core objectives. The documents that were leaked were prepared by officials for Ministers. They contained a free and frank appraisal of a variety of areas related to the remit of the Home Office. They were prepared in the expectation that the information contained within them would not be prematurely (and certainly not illegitimately) released in to the public domain. It is vital for the proper functioning of government that Ministers are able to seek free, frank and candid advice from officials, and that this can be provided in an environment in which proper debate and discussion can be had. In essence, Ministers and officials need to have the private space to 'think the unthinkable'. It is only through such debate that potential impacts of policy decisions can be properly weighed up. This series of leaks adversely affected the operation of the space in which such a debate could take place, and thereby impeded the proper functioning of the Home Office.

The release of the six documents you have requested would have the clear effect of legitimising the actions of those who leaked the information. Such a release may serve to encourage those who may be thinking of leaking information to do so. The unauthorised release of government information can damage confidence in government and its ability to fulfil its priorities. Clearly any action which may serve to hinder the proper functioning of government would not be in the wider public interest.

The outcomes described above would also affect the reputation and impartiality of the civil service. The impartiality and quality of advice to Ministers is a hallmark of the British civil service. There are well established procedures, laid out in the civil service code, for officials to follow if they have a grievance or concern. The illicit leaking of information can never be condoned and will risk damaging the proper functioning of HMG.

For the reasons described above I am satisfied that the public interest in non-disclosure outweighs the public interest in disclosure of this information.