

Ganesh Sittampalam

**Web** [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

By email  
request- 18426-4695466e@whatdotheyknow.com

18 January 2010

Ref: 12862

Dear Mr Sittampalam,

Thank you for your email of 23 September in which you requested information about the case of Ms Tapui, a cleaner employed by Baroness Scotland, the Attorney General. Your request has been dealt with under the Freedom of Information Act 2000. I apologise for the delay in sending you a response.

You asked for the following information:

Please supply all evidence gathered during the investigation you conducted into the recent breach of the law by Baroness Scotland in employing someone who did not have the right to work in the country.

I am particularly interested in what evidence there is to back up the claim that Baroness Scotland did take steps to check the worker's documents (as your chief executive has stated, for example here: <http://www.timesonline.co.uk/tol/news/politics/article6845117.ece>).

UKBA has obligations under the Data Protection Act 1998, it is the general policy of UKBA not to disclose, to a third party, personal information about another person. Some of the information we hold is the personal data of people connected to this investigation. Under section 40(2) (personal data) of the Freedom of Information Act I am unable to disclose this information to you. Further details about the application of this exemption can be found in Annex A.

Furthermore, the information that we hold is also currently exempt under section 30(1) (b) of the Freedom of information Act 2000. Section 30(1)(b) allows us to exempt information if that information has been held by the Department for the purposes of any investigation which is conducted by the Department and which may lead to a decision to institute criminal proceedings. This is the case here. However, as a qualified exemption, it can only be used where the public interest in withholding the information outweighs the public interest in disclosure. Further information can be found in Annex A.

Yours sincerely

**Tony Smith**  
**London & South East Region**  
London Area Director's Office

## **Annex A – Application of Exemptions**

### **Section 40(2)**

Any information which UKBA might hold about the above named individual is their personal data. It is the general policy of UKBA not to disclose, to a third party, personal information about another person. This is because UKBA has obligations under the Data Protection Act 1998 and in law generally to protect this information.

Under the Data Protection Act 1998 personal data can only be processed if it meets the requirements of the data protection principles. The first principle states that any processing must be fair, lawful and meet one of the conditions in Schedule 2 and in the case sensitive information (including certain material relating to a person's immigration history) Schedule 3 of the Data Protection Act 1998. After careful consideration of this Act and the ICO guidance on disclosure it is clear that processing this information would neither be fair or meet the conditions in Schedule 2 or 3. Therefore any disclosure of information would be a breach of the Data Protection Act 1998 and therefore we cannot supply the information you have requested with regard to the case of the above named individual.

### **Section 30(1)(b)**

We have considered the public interest there may be in the circumstances of this case in disclosing the information requested. There is a public interest in the disclosure of this information as it will allow the public to assess whether UK Border Agency is adequately policing the legislation it is responsible for enforcing on the prevention of illegal working.

We have also considered the public interest there may be in maintaining the exemption to the duty to communicate. There is clearly a strong public interest in upholding the law and prosecuting those who contravene the laws on illegal working. Disclosing details of this investigation would also not be in the public interest as it could compromise any subsequent legal action to be taken by UK Border Agency and could alert others to the intended course of action UKBA plans to take against them. Furthermore, it could lead businesses to alter their records to prevent or hamper legal proceedings against them.

We have considered whether in all the circumstances of the case the public interest in maintaining this exemption outweighs the public interest in disclosing the information requested. We have concluded that the balance of the public interests identified lies in favour of maintaining the exemption because it is in the overall public interest that UKBA can pursue effective legal action against those who knowingly contravene immigration laws.

## **Annex B – Complaints**

If you are dissatisfied with this response you may request an independent internal review of our handling of your request. Internal review requests should be submitted within two months of the UK Border Agency sending a substantive reply to your original request and should be addressed to:

UK Border Agency  
Central Freedom of Information Team  
11th Floor  
Lunar House, Short Corridor  
40 Wellesley Road  
Croydon  
CR9 2BY

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.