

**Information Management  
Directorate**

Information Access Policy Team  
Lunar House  
40 Wellesley Road  
Croydon  
CR9 2BY

Ganesh Sittampalam  
request-26925-9012742a@whatdotheyknow.com

**Fax** 020 8196 3172  
**Web** [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

4 March 2010

Ref: 13754

Dear Mr Sittampalam

Thank you for your email of 14 January 2010 in which you requested information regarding all records, internal and external correspondence relating to a previous Freedom of Information request which you submitted. Your request has been dealt with under the Freedom of Information Act 2000.

You made the following request:

Please send me a copy of all records and internal and external correspondence relating to Freedom of Information request 8426-4695466 ("Baroness Scotland investigation").

I can confirm that UKBA holds information that you have requested. However, I am unable to disclose it to you (with the exception of personal data about yourself). After careful consideration we have decided that this information is exempt from disclosure by virtue of Sections 36(2)(b)(i) and (ii) and 36(2)(c) of the Freedom of Information Act. These provide that information can be withheld where disclosure would inhibit the free and frank provision of advice [s36(2)(b)(i)], and exchanges of views for the purpose of deliberation [s36(2)(b)(ii)]. In addition as release would otherwise prejudice the effective conduct of public affairs it is also exempt under s36(2)(c).

A detailed explanation for the application of these exemptions is contained in the annex to this letter, together with details of our complaints process. In particular it is noted that your request for an internal review of the handling of your earlier FOI request (12682) is still ongoing. Given the ongoing nature of the internal review, the original request is still 'live'. As a result it has been decided in this instance that disclosure of the information you requested would be prejudicial. Section 36 is a qualified exemption meaning that an assessment of the public interest test must be undertaken in advance of taking a decision about whether the information should be disclosed or withheld. In this case we consider that disclosure is not in

the public interest. It is for these reasons that your request in relation to non-personal data has been refused under section 36 of the FOI Act.

Any personal data contained within the papers relating to people other than you is exempt from disclosure under section 40(2) of the FOI Act. This includes the personal data of other requesters and junior Home Office officials. The release of such information would breach the Data Protection Act (DPA) and is therefore exempt from disclosure.

You do have a right however to request personal data about yourself under the subject access provisions of the Data Protection Act (DPA) 1998 (such information cannot be supplied in response to an FOI request under section 40(1) of the Act). To submit a Subject Access Request (SAR) you must provide:

- a cheque or postal order for £10, payable to 'The Home Office Accounting Officer'; and
- sufficient personal information to enable us to uniquely identify you - for example, a copy of your passport or driver's licence, original utility bills, and your Home Office reference number if you have one.

Should you wish to submit an SAR, please send the above fee and proof of identity to:

DPU SAR  
15 Wellesley Road  
Croydon  
Surrey  
CR9 2AR

Yours sincerely

O. Awosanya  
Information Access Policy Team  
UK Border Agency

## **Annex A**

### **CONSIDERATION OF THE USE OF SECTION 36**

Some of the information you have requested is exempt from disclosure under Section 36(2)(b)(i) & (ii) and (c) of the Freedom of Information Act 2000. Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under the Act would or would be likely to inhibit the free and frank provision of advice; the free and frank exchange of views for the purposes of deliberation; and would otherwise prejudice or would be likely to prejudice, the effective conduct of public affairs.

We believe that in this case disclosure of the information concerned into the public domain would inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation, in relation to the handling of FOI requests. It is important the public authorities can analyse and consider requests comprehensively so that information is released where it is appropriate to do so, in the public interest. Our ability to do this would be harmed by disclosure, especially where the original request or subsequent internal review was still under consideration. In addition, disclosure of the information would prejudice the effective conduct of public affairs. This is because it would adversely affect the effectiveness of FOI processes and seek to circumvent the robust appeal mechanism contained within the legislation. This appeals process is the most effective and proper vehicle for seeking redress where applicants are dissatisfied with the handling of their original request(s). The degree of harm is exacerbated in this case owing to its young age, and the fact that the original request remains live (albeit it at internal review).

### **CONSIDERATION OF THE PUBLIC INTEREST BALANCING TEST**

We have considered the public interest there may be in the circumstances of this case in disclosing all the information relating to the deliberation of your FOI request. There is a strong public interest in disclosing information which ensures that there is transparency in the way in which government operates, in this case in relation to the handling of FOI requests. In addition, knowledge that the arguments relating to a debate will be disclosable, could in fact improve the quality of those arguments. While the information you have requested would primarily be of interest to you, there is no doubt that there is a wider public interest in disclosure given the insights into the operation of FOI within the Home Office that it would provide.

We have also considered the public interest there may be in maintaining the exemption to the duty to communicate. I have outlined above the harm that would be caused in this case by releasing the information that you have requested at the current time. There is a strong public interest in ensuring that Ministers and their officials are able to think through all the implications of particular options. In particular they need to be able to undertake rigorous and candid assessments, as in the case of deliberating your request regarding Baroness Scotland and the investigation of her former cleaner. Ministers and officials need to be able to consider and discuss all options, and to expose their merits and demerits, and their possible implications. Their candour in doing so will be affected by their assessment of

whether the context of their discussions will be disclosed in the near future, when suggested ideas or options had been subsequently dismissed or ruled out.

It is also in the public interest that FOI processes operate as effectively as possible, to ensure that requests are dealt with appropriately and that timely responses are issued. I fully accept that your initial request was not dealt with as speedily as it should have been, and I apologise for this. Nonetheless, is it not in the public interest that the effective operation of the FOI Act is hampered by requests designed to circumvent the official appeals mechanism while that appeals process is ongoing.

We have considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. We have concluded that the balance of the public interest currently lies in favour of maintaining the exemption. The public interest balancing test favours withholding this information as the greater public interest lies in maintaining the integrity of how government makes decisions of this nature. This process would be undermined as the free and frank exchanges of views would be discouraged, affecting similar discussions in the future which would clearly not be in the public interest where issues regarding UKBA investigations are concerned. The critical factor in reaching this conclusion is the timing of this request. If the request was no longer live the balance of the public interest would be likely to be different.

## **Annex A – Complaints**

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 13754. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

The Deputy Director  
UK Border Agency  
Freedom of Information Team  
11<sup>th</sup> Floor  
Lunar House  
40 Wellesley Road  
Croydon CR9 2BY  
e-mail: [Freedom.Informationteam@homeoffice.gsi.gov.uk](mailto:Freedom.Informationteam@homeoffice.gsi.gov.uk)

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