



# Home Office

## Information Access Team

Information Management Service

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Mr Andrew Watson  
request-27977-  
77325ccb@whatdotheyknow.com

Our Ref 13892  
Your Ref  
Date 10 May 2010

Dear Mr Watson

### **Freedom of Information request (our ref. 13892): internal review**

I am writing further to my e-mail of 26<sup>th</sup> March 2010 about your request for an internal review of the response to your Freedom of Information (FoI) request about the dates and locations of all meetings of the Public Panel regional groups held to date and the minutes of said meetings.

I have now completed the review. I have examined all the relevant papers and have consulted the policy unit which provided the original response. I have considered whether the correct procedures were followed and assessed the reasons behind the response that was issued to you. I confirm that I was not involved in the initial handling of your request.

My findings are set out in the attached report. My main conclusion is that the response issued to you citing Section 22 as grounds for withholding the information was correct. The information you requested was published on the 17<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup> March 2010 and can be found at this link:  
[http://www.ips.gov.uk/cps/rde/xchg/ips\\_live/hs.xsl/1602.htm](http://www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/1602.htm).

However, the response you were sent should have included a public interest test argument for the use of Section 22. You will find the correct public interest test arguments considered in the attached report within paragraphs 14-18.

I can also confirm that your request was answered within 20 working days and therefore there was no procedural breach of section 10(1) of the Act.

I would like to inform you that I am happy to talk to you about our conclusions if you wish to contact me.



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This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your FoI request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

Yours sincerely

**Martin Riddle**  
**Information Access Team**

**Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Andrew Watson (reference 13892)**

**Responding Unit:** Identity and Passport Service (IPS)

**Chronology**

Original Fol request:	28/01/2010
Acknowledgement:	02/02/2010
Identity and Passport Service (IPS) response:	25/02/2010
Request for internal review:	23/03/2010

**Subject of request**

1. Mr Watson asked for the following information regarding two external recruitment campaigns.

You have appointed members of the public to a “Public Panel” related to the National Identity Scheme, Please send me:

- The dates and locations of all meetings of the Public Panel regional groups held to date.
- The minutes of all meetings of the Public Panel regional groups held to date.

**The response by Identity and Passport Service (IPS)**

2. The response issued to Mr Watson exempted the information from disclosure under section 22 of the Freedom of Information Act. Section 22 relates to information intended for future publication and the response stated that it was the intention of IPS to publish the requested information by spring of this year.

**Mr Watson’s request for an internal review**

3. In his request for an internal review Mr Watson states the following grounds:

“The exemption only applies if "it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to". You are soliciting members of the public to join these panels, and also soliciting questions to be put to the panels. It is therefore unreasonable to withhold minutes saying what the panels have already discussed from those considering whether to join a panel, or whether to propose a question.”

4. Mr Watson further states that:

“Your rejection also fails the test of "reasonableness" on the common definition of

minutes as the rapidly-available record of the proceedings of a meeting. It is now five months since the first round of public panel meetings; if the minutes of these meetings are intended to be published, it is not reasonable that they be so long delayed until a completely arbitrary date.”

5. The final point Mr Watson makes is as follows:

“Your rejection says "... it is our intention to publish the information that you have requested by spring of this year. The minutes of all the meetings along with associated papers will be published on the Public Panel pages of our external IPS website." Spring began two days ago on 21st March, so your self-declared deadline has expired, but the minutes have not yet appeared on the web site.”

### **Procedural issues**

6. The original request was submitted on 28 January 2010 and a full response was issued on 25 February 2010. This represents a period of 20 working days between receipt of the request and the final response being issued. This means that the response was within the target deadline of 20 working days as specified in section 10(1) of the Act.
7. A letter was sent on 2 February to Mr Watson acknowledging receipt of the case and advising when the deadline was. Although this is not a requirement of the Act, it is generally considered best practice to do so and IPS followed this best practice.
8. The 20 working day deadline is extendable by virtue of section 10(3) of the Act. Given that the response was issued within the time limit of 20 working days and that no qualified exemptions were engaged, this was not necessary in this case.

### **Consideration of the response**

9. Section 22 can only be applied if a number of conditions have been met. The Act states that the following must apply for it to be eligible:

Information is exempt information if—

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
  - (b) the information was already held with a view to such publication at the time when the request for information was made, and
  - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
10. As a result of this review I can confirm that this was indeed the case in regard to sections (a) and (b). In relation to (c) I have examined this in more detail in paragraphs 15 and 22 below.

11. However, the application of section 22 is subject to one further important qualification; the public interest test must be satisfied. The response to this case cited no public interest test argument as grounds for using the section 22 exemption.
12. Mr Watson states a clear valid public interest test argument in his request for an internal review, as to why it is in the public interest to release these documents in response to the request rather than via the planned publication of the information on the IPS website. Mr Watson points out that it is unfair to withhold the information on what has already been discussed from those either considering joining a panel or proposing a question.
13. However there are counter argument to his statement that should have been addressed and included in the Section 22 response issued to Mr Watson. These arguments include the following points.
14. The Freedom of Information Act recognises the desirability of information being freely available in its own right, but section 22 also acknowledges that public authorities must have freedom to be able to determine their own publication timetables. This allows them to deal with the necessary preparation, administration and context of publication. Where information is intended to be made available, individual requests for information should not determine the publication timetables of public authorities.
15. In this particular case, we must first consider the individuals who made up the panel. The panel members and members of the public, who volunteered to take part in the exercise, have rights awarded to them under both the Freedom of Information Act and the Data Protection Act to protect them. Any consultation with them and any contributions they have made must be examined closely. Before anything is published the Home Office must ensure that what has been recorded is accurate and has been portrayed in the right context. Their approval of the recorded information must be sought.
16. Secondly, the Home Office must ensure that the information intended for publication meets the standards and requirements set for departmental publications. This requires time. It would be considered unfair for the Home Office to release this information prior to meeting such standards. As an example of this, the reports of public inquiries are often published under the protection of the Parliamentary Papers Act to avoid defamation or other civil action.
17. Finally we must also consider whether releasing the information in response to this request would result in 'unfairness' to others who might be affected by the release of this information to Mr Watson first. By releasing the information in response to Mr Watson's FOI request before releasing it to others would privilege him to the information before the rest of the general public.
18. I acknowledge that the requested information about the "Public Panel" relates to the National Identity Scheme which is considered a highly sensitive topic. Any information released will ultimately affect the public at large and therefore it is in the public interest to release the information to everyone at the same time.

19. In Mr Watson's request for an internal review, one of the points he raised related to the fact that IPS did not publish the information when they indicated. IPS responded stating that the intention was to publish "by spring of this year". Mr Watson has interpreted this to mean the start of spring as of the 21<sup>st</sup> March 2010. Although it would be possible to analyse this statement and argue points around its interpretation, the exercise is irrelevant. One of the clauses in section 22 is that when citing it as a means to withhold the information, the exact date, does not necessarily have to have been decided already, nor does it have to be cited in the response. The reason for this as stated above is that section 22 acknowledges that public authorities must have freedom to be able to determine their own publication timetables. IPS provided a rough time frame in their response in order to be helpful even though one was not required.
20. However there are limits as to how long a timetable the public authority can put in place for publishing information and this must be considered when citing section 22 as grounds for withholding the information. Public authorities should not be able to avoid putting information in the public domain by adopting unreasonable publication timetables or an 'intention' to publish where there is little prospect of that happening within a reasonable timescale. Mr Watson raised this issue in his request for an internal review when he spoke about waiting 5 months since the first public panel meeting.
21. However, the points raised by Mr Watson that are covered in paragraphs 18 and 19 are mitigated by the fact that IPS published the outcomes of the meetings that have been held to date on the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> March 2010, one week prior to Mr Watson submitting his request for an internal review. The relevant information can be found at this location:- [http://www.ips.gov.uk/cps/rde/xchg/ips\\_live/hs.xsl/1602.htm](http://www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/1602.htm). The link contains all the information requested by Mr Watson, including the dates, locations and minutes (marked as notes of the meetings at the link) of the meetings that have been held to date. This means that IPS met their obligations as outlined in their original response to Mr Watson and did so prior to the date specified by Mr Watson of 21<sup>st</sup> March 2010, as the date he expected all publications relating to this matter to be published by.

## **Conclusion**

22. There was no procedural breach of section 10(1) as the reply was issued within the 20 working day deadline.
23. There was no procedural breach of section 1(1)(a) as the response stated that the precise information requested was held.
24. Section 22(1) was technically breached as although the response to the request relied on Section 22 it did not include any public interest test arguments that are required when citing this exemption.
25. The decision to withhold the information under section 22(1) has been upheld, by utilising section 22(1). This exemption requires a public interest test and this can be found in paragraphs 15-18 above.



**Information Access Team  
Home Office  
10/05/10**



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