



Home Office

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Mr Julian Todd
request-2887-ee575407@whatdotheyknow.com

Our Ref: 10394
Date: 2 April 2009

Dear Mr Todd,

I am writing further to my letter of 31 March 2009, regarding your request for an internal review into your Freedom of Information request for information held by the Home Office relating to section 44 authorisations under the Terrorism Act (2000).

I must first of all apologise that it has taken longer than we expected to send you a substantive response. However I have now completed a full review of the handling of your request and of the reasons behind the decisions taken by the Home Office to withhold this information. This request has been treated on its own merits and all papers originally considered have been re-considered as part of the internal review.

The first part of my review concerned the procedural aspects of the handling of this case. Your original request was received by the Home Office on 14 October 2008. Section 10(1) of the Act states:

'a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

In order to comply with the 20 working day limit specified you should have been provided with a full response to your request on 11 November 2008. In the event, you received a full response on 26 November 2008, a full eleven working days following receipt of your original request.

The 20 working day limit specified in section 10(1) of the Act is extendable by virtue of the provisions contained within section 10(3), if a qualified exemption requiring the conducting of a public interest test is under consideration. In order to extend the deadline in accordance with section 10(3) the authority must inform the applicant of this fact within the 20 working day deadline and provide him/her with a revised response deadline *"that is reasonable in the circumstances"*. You were sent a PIT extension letter on 10 November 2008, within the twenty working day deadline. The letter stated that the public interest was being considered in relation to the qualified exemption at section 36 of the Act (prejudice to the effective conduct of public affairs). The letter extended the response deadline until 17 November 2008, and was fully compliant with section 10(3) of the Act.

Unfortunately you did not receive a full response until 26 November 2008, a full seven working days following the extended deadline and you were not advised of the need to further extend the deadline. Please accept my apologies for this oversight.

The response letter stated that the Home Office was withholding information regarding *'internal Home Office procedures and processes'* under section 36(c) of the Act. Unfortunately this was an unintentional error and should have read section 36(2)(c) and as such the response represents a technical breach of section 17(1) of the Act, which states:

17(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with Section 1(1), give the applicant a notice which-

- (a) states the fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.*

Additionally section 17(3) of the Act, requires a public authority to conduct a full Public Interest Test (PIT) when refusing to release information using a qualified exemption. However, there is no evidence within the letter that such a test was undertaken. This represents a breach of section 17(3) of the Act.

The Home Office notes and apologises for the breaches of section 17(1) and 17(3) of the Act during the handling of your request. The department takes its responsibilities under the Act seriously and will remind caseworkers of the need to correspond with applicants in a timely and efficient manner, and to ensure that the handling of requests remains compliant with the Act.

In respect of the substantive content of the response provided to you I am satisfied that it answers all of the questions contained within your request, with the exception of part three. The response letter provided you with information related to the process for handling such requests when they come in to the Department and the fact that while the Home Office monitors those Constabularies which currently have section 44 powers in place the onus remains on the individual Constabularies concerned to ensure that they renew or apply for authorisations under section 44. As a result there is no specific database on which the information is held for tracking purposes.

Additionally, in response to your request for guidance notes and sample letters sent to Constabularies to assist them in their duties to comply with the provisions of the Act, it was explained that this information was already in the public domain, and as such was refused under section 21 of the FOIA. A link was then provided to the information in question. As such I am satisfied with the responses provided to parts one, two and four of your request, and confirm that they are compliant with the provisions of the Act.

In part three of your request you ask for:

'The template sample letters which the Secretary of State uses to confirm the authorisation and vary its conditions.'

It is information in relation to this part of your request that the caseworker originally withheld under section 36 of the Act. Following my investigations, it has become

clear that section 36 of the Act was used to withhold a single document relevant to your request. The document entitled '*Confirmation of Stop and Search Authorisation (S44-47 Terrorism Act 2000)*' is a template on which the Secretary of State must authorise the use of stop and search powers, within a particular area, under section 44 of the Terrorism Act, within 48 hours of an initial authorisation being given by a Chief Officer, or equivalent rank.

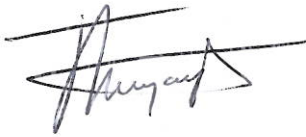
Having considered all of the relevant factors I have decided that the use of section 36 to withhold this information was not in the public interest in this instance. As a result I am pleased to be able to enclose a copy of the said document to you in full. A copy of this document can be found in the attached annex to this letter.

I hope that you find the further information provided to you of interest, and would like to assure you that following my review I am satisfied that you have been provided with all relevant information that the Home Office holds.

Should you remain dissatisfied after this internal review you have the right of complaint to the Information Commissioner, as established by section 50 of the Freedom of Information Act. You can write to him at:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Bragaglia', written over a horizontal line.

John Bragaglia
Information Access Consultant

From: [Name]
Operational Support and Knowledge Management
OSCT

Tel:

[Date]

[Secretary of State]

CONFIRMATION OF STOP AND SEARCH AUTHORISATION (S44 -47 TERRORISM ACT 2000) – [Police Force]

Timing

Immediate. If you are content, the authorisation needs to be confirmed within 48 hours of being made, i.e. by **[48 hour cut off period]**.

Recommendation and Confirmation

2) That you **sign, time and date the confirmation below to confirm** the authorisation for the use of these powers:

CONFIRMATION OF POWER TO STOP AND SEARCH UNDER SECTION 44 OF THE TERRORISM ACT 2000.

By the power vested in the Secretary of State under Section 46 of the Terrorism Act 2000, I confirm the authorisation for the exercise of stops and searches under Section 44 (1) and (2) of that Act given by:

- [Authorising police officer name and rank] at [time signed by police], in relation to the [designated/whole force area] area of the [Police Force] (stated period [period of authorisation].)

NJU Ref:

To be completed if decision made orally:

- This written confirmation records the oral decision I made at hrs on(date) to confirm this authorisation.

Time:

Date:

SECRETARY OF STATE (or nominated Minister):

Key Points

3).

Area of Current Authorisation

4) The authorisation covers [area of authorisation] of the [Police Force]. Please see the maps attached at Annex A.

Previous Authorisation

5) During the period [last period of authorisation], [Police Force] stopped ... pedestrians, vehicles, ... drivers and ... passengers; of which ... pedestrians, ... vehicles, ... drivers and ... passengers were searched. There were ... resultant arrests.

6)

Presentational Issues

7) The Home Office does not make the fact of the existence of an authorisation in any particular area public while it is running. However, it is open to the Chief Officer to share this information where he thinks this appropriate on a local level. (If London Force) The use of Section 44 powers in the London area is, in the main, accepted following the London Bombings and the subsequent attempted attacks in July 2007 and given the range of potential targets.

Level of Controversy

7) Minimal. Section 44 powers in general have been the subject of media interest in the past however there is no reason to expect particular interest now.