

Mr John Walker

Request-8060-4956ff5c@whatdotheyknow  
(by email)

Our Ref: 11233

21 January 2010

Dear Mr Walker

Further to our letter of 13 May I am now in a position to provide a substantive reply to your request of 12 February for copies of all correspondence relating to the decision to ban Geert Wilders. Your request has been handled in accordance with the Freedom of Information Act 2000. I apologise for the delay in sending you a response.

I am able to confirm that the Home Office does hold information relevant to your request and some of this is enclosed with the response. Nonetheless, we have decided not to communicate some of this information to you in accordance with the exemptions under Sections 21, 27,(1)(a), 36(2)(b)(i) & (ii) and (c) and 40 of the Freedom of Information (FOI) Act 2000. I will deal with each of these exemptions in turn:

### **Section 21**

I have decided not to communicate some information pursuant to the exemption under Section 21 of the Freedom of Information Act 2000. This allows us to exempt information on the grounds that it is already in the public domain. Some of the information held by the UK Border Agency was sourced from independent media sources and is as such easily accessible by searching the internet and media archives. Additional information was made public by Mr Wilders himself and this has been widely reported.

### **Section 27**

Some of the information you have requested falls within the scope of Section 27(1)(a) of the Freedom of Information Act 2000. Section 27(1)(a) allows us to exempt information if its disclosure would, or would be likely to, prejudice relations between the United Kingdom and another state.

If I were to disclose this information to you it could substantially prejudice relations between the United Kingdom and another state. This is because disclosure could affect the UK's relationships with other countries and as a consequence they could be less willing to assist the UK. Delivery of our domestic and foreign policy objectives relies to a large extent on the free flow of confidential information between the UK and other countries. They may be less likely to share such documents or information with us in the future, impeding our ability to develop or carry out public policy in the public interest including interests of safety and security of UK citizens.

The use of this exemption also requires us to consider whether in all circumstances of the case the public interest in maintaining the exemption stated above outweighs the public interest in disclosing the information.

I have considered the public interest that there may be in the circumstances of this case in disclosing this information to you. There is a public interest in disclosing the information as it would demonstrate the good relationships and working practices between other states and the United Kingdom.

I have also considered the public interest there may be in maintaining the exemption to the duty to communicate. There is a public interest in maintaining our relationships with other states by not prohibiting frank and full discussion and the exchange of views and information between the UK and other states. Disclosure could also reveal their working practices. Disclosure would affect our ability to work with other countries and they may not be willing to assist the UK in the future if they thought that information they had provided would be disclosed to the public. Mr Wilders is a Dutch MP and as such in the specifics of this case disclosure would affect the ongoing necessary diplomatic relationship with the current Dutch administration.

I 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. I have concluded that the balance of the public interest identified lies in favour of maintaining the exemption because it is in the overall public interest that the UK maintains good relationships with other countries.

## **Section 36**

A Home Office Minister has decided, in their reasonable opinion, not to communicate some of the information you have requested pursuant to the exemption 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 or 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 the views for the purposes of deliberation. In addition, some of the

information would or would be likely to prejudice the effective conduct of public affairs. This is because it would involve the disclosure of advice between officials and Ministers, in the form of emails and other correspondence. Good government requires that it be able to engage in full and frank discussions in relation to how a particular case is determined. Such discussion makes for better quality decisions. In her consideration of Mr Wilders' case, the then Home Secretary took into account the views of relevant departments and agencies including the Foreign and Commonwealth Office, the Department of Communities and Local Government and law enforcement agencies, as well as having regard to any representations made by groups and individuals. 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. Moreover, in making an assessment on whether to deny entry to Mr Wilders, the then Home Secretary needed to form a view of all the evidence relating to him, so as to act consistently, proportionately and reasonably in applying the appropriate powers. Officials are sometimes required as a matter of timely conduct to prepare lines to take in relation to the possible outcomes in advance of a decision being taken or announced by Ministers. As such drafts are necessarily speculative and may not reflect the Minister's actual decision or view, disclosure of such drafts could give a misleading impression of government policy. In the circumstances of this case, the decision ultimately rested with the Immigration Officer on Wilders' arrival and could not be predicted conclusively until that point.

We have considered the public interest there may be in the circumstances of this case in disclosing the information. There is a strong public interest in disclosing information which ensures that there is transparency in the way in which government operates. In addition, knowledge that the arguments relating to a debate will be disclosable, will in fact improve the quality of those arguments. Far from inhibiting the frank provision of advice, there might be circumstances where the prospect of disclosure would enhance the quality of advice.

We have also considered the public interest there may be in maintaining the exemption to the duty to communicate. 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 whether to grant admission to Mr Wilders, of the risks to a particular decision being taken. It is also in the public interest that disclosure of the process of interdepartmental consideration does not undermine the collective responsibility of government. Moreover, Ministers and their officials need space to develop their thinking and explore options in communications and discussions with other Ministers and officials. It would not be in the public interest to disclose this information.

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 lies in favour of maintaining the exemption. It is clear that 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 of public safety are concerned.

## **Section 40**

Section 40 allows us to exempt personal information. 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 and in law generally to protect this information. Your request has been considered in line with UKBA's obligations under the Freedom of Information Act. However it has been concluded that some of the information you have requested is exempt under Section 40(2) of that Act as it is personal information about Mr Wilders. Section 40(2) of the Freedom of Information Act states that disclosure would breach the Data Protection principles and therefore we cannot supply you with the information you have requested.

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 submitted to:

The Deputy Director  
Freedom of Information Team  
UK Border Agency  
Lunar House  
11<sup>th</sup> Floor  
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.

Yours sincerely

Freedom of Information Caseworker

