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Mr Robert Simpson
request-80931-56206722@whatdotheyknow.com

5 September 2011

Dear Mr Simpson

Freedom of Information request (our ref. 19470): internal review

Thank you for your e-mail of 9 August 2011, in which you asked for an internal review of our response to your Freedom of Information (FoI) request relating chapters 5.4 and 5.5 of the European Casework Instructions (ECIs)

I have now completed the review. I have examined all the relevant papers, including the information that was withheld from you, and have consulted the policy unit which provided the original response. I have considered whether the correct procedures were followed and assessed the reasons why information was withheld from 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 information was not exempt under section 31(1)(e)(operation of immigration controls).

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

L. Fisher

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Robert Simpson (reference 19470)

Responding Unit: UK Border Agency (UKBA)

Chronology

Original Fol request:	25 July 2011
Acknowledgement:	26 July 2011
Original Fol deadline:	22 August 2011
UKBA response:	9 August 2011
Request for internal review:	9 August 2011

Subject of request and UKBA response

1. Mr Simpson's Fol request of 25 July 2011 asked for information relating to the UK Border Agency's European Casework Instructions (ECIs).
2. Mr Simpson's original Fol request is set out in full below.

"In the European Casework Instructions, Chapter 5, as published on your web site, two primary sections are redacted:

5.4 The Continued Right Of Residence Of Non-EEA Nationals

5.5. Non-EEA family members of British Citizens (Surinder Singh ruling)

I believe these redactions obscure policy information and guidance for caseworkers.

This is a request under FOI, for the full text of the sections listed above, or, where there is legally excludable material under FOI, for those sections to be minimally redacted in a way that does not obscure the non-excludable text."

3. UKBA combined the above Fol request with a subsequent request from Mr Simpson (sent on the same day) for the following information:

"The Chapter List is from 2007 and appears to be out of date. I would like to request the current version of this. As a courtesy (but outside the scope of this FOI request) I would also suggest that it be refreshed on your web site."

The response by UKBA

4. UKBA withheld the redacted information in sections 5.4 and 5.5 of the ECIs under section 31(1)(e) (operation of immigration controls).
5. UKBA also withheld the remaining chapters of the ECIs that are currently under review under section 22(1) (future publication). UKBA provided some background on its publication schedule for the ECIs. It also confirmed that the published chapters are the latest versions which are used by its caseworkers. It also provided a link to chapters one and three of the ECIs that have already been completed as part of its reviewing project and are published on UKBA's website.

Mr Simpson's request for an internal review

6. Mr Simpson's internal review request focuses on the redaction of sections 5.4 and 5.5 of the ECIs.
7. Mr Simpson's original FOI request asks for "the full text of these redacted paragraphs, or "for those sections to be minimally redacted in a way that does not obscure the non-excludable text." The original response refused to disclose this information under section 31(1)(e) (operation of immigration controls).
8. Mr Simpson states that a "skillfull review of the paragraphs would allow a FOI release that both satisfied the need to protect immigration controls while also satisfying my FOI request for access to non-sensitive, but previously redacted, portions of the text."
9. This report will assess whether section 31(1)(e) (operation of immigration controls) was appropriately applied to sections 5.4 and 5.5 of the ECIs.

Procedural issues

10. UKBA did not comply with section 1(1)(a) of the Act as it did not clearly confirm whether it held the requested information, although it is implied the information is held given that exemptions are cited. I can confirm that UKBA does hold the information requested.
11. UKBA responded within twenty working days, complying with section 10(1) of the Act.
12. UKBA complied with section 17(1) by stating its reasons for refusing to release the information and the exemption that applied.
13. Mr Simpson was informed of his right to request an independent internal review of the handling of his request, as required by section 17(7) of the Act. UKBA's response also informed him of his right to

complain to the Information Commissioner, as specified in section 17(7) of the Act.

Consideration of the response

14. I have examined the withheld information in sections 5.4 and 5.5 of the ECIs.
15. The information which has been redacted from the box at the top of section 5.4 is set out below.

Exactly the same checks that are detailed in Annex B must be carried out on all third country nationals who apply on the basis that they retain the right of residence.

16. The information which has been redacted from the box at the top of section 5.5 is as follows:

Exactly the same checks that are detailed in Annex B must be carried out on all third country nationals who apply as family member of British citizens.

17. Information is exempt under section 31(1)(e) if its disclosure would, or would be likely to, prejudice the operation of the immigration controls. I have not been presented with any evidence to justify this position. I conclude that the information is not exempt under section 31(1)(e) or any other exemption in the Act. The information is therefore suitable for release.
18. Mr Simpson did not ask for Annex B of the ECIs in his original request so it is not under consideration in this report, but I can confirm that this Annex does engage section 31(1)(e) (operation of immigration controls) of the Act.

Conclusions

19. UKBA responded within twenty working days, complying with section 10(1) of the Act.
20. UKBA did not comply with section 1(1)(a) of the Act as it does not clearly state whether it holds indexes for the policy guide and procedure guide.
21. Section 31(1)(e) (operation of immigration controls) did not apply to the requested information at sections 5.4 and 5.5 of the ECIs.

Information Access Team, Home Office
September 2011

Annex – UKBA response

“Dear Mr. Simpson

Thank you for your e-mail of 25 July and your subsequent email of 28th July in which you have asked to be sent:

the current Chapter list for the European Casework Instructions and any chapters of the European Casework Instructions that have not yet been released and

a copy of the full text of sections 5.4 and 5.5 of Chapter 5 of the European Casework Instructions as you state that the redacted sections obscure policy information and guidance for caseworkers.

Your request has been handled as a request for information under the Freedom of Information Act 2000.

I am able to disclose the following information.

The Chapter List currently published on the UKBA website is the only version available. We will make amendments to bring this up to date in due course and, when finalised, we will publish the revised version on the website.

With regards to your request for all chapters of the European Casework Instructions that have not yet been released, I can confirm that the chapters which are published on the UKBA website are the latest versions which all caseworkers use. The European Casework Instructions are currently under review and are subject to modernisation as part of a wider UKBA project to ensure consistency and simplicity of language, as well as being an opportunity to clarify and expand on existing policy. Chapters 1 and 3 have already been completed as part of this project and published on the website. For your reference you can access them here:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/working/>

The remaining chapters of the European Casework Instructions remain under development and the date of publication for these chapters is not yet known but will be before close 2011. Once finalised, these chapters will also be published on the UKBA website at the link above. After careful consideration we have decided that the information is exempt from disclosure under section 22 (1) of the Freedom of Information Act 2000. This provides that information can be withheld where information requested by an applicant that is intended for future publication and the public interest falls in favour of applying the exemption.

Arguments for and against disclosure in terms of public interest, with the reasons for our conclusion, are set out in the attached Annex A.

In reference to your request for the full text of sections 5.4 and 5.5 of Chapter 5 of the European Casework Instructions including redactions, I can confirm that the redacted text of sections 5.4 and 5.5 is held by the Home Office. We have decided, that the information held is exempt from disclosure under section 31(1)(e) of the Freedom of Information Act 2000. This exemption allows us to exempt information if its disclosure would, or would be likely to, prejudice the operation of immigration controls. It is considered that if we were to disclose the redacted sections of 5.4 and 5.5 of Chapter

5 of the European Casework Instructions, it could substantially prejudice the operation of our immigration controls. This is because disclosure may enable individual immigration offenders to evade detection. 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.

Arguments for and against disclosure in terms of public interest, with the reasons for our conclusion, are set out in the attached Annex B.

In keeping with the Freedom of Information Act 2000, we assume that all information can be released to the public unless it is exempt. In line with normal practice we are therefore releasing the information which you requested via the Home Office website.

I hope that this information meets your requirements. I would like to assure you that we have provided you with all relevant information that the Home Office holds.

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 FOI 19470. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
e-mail: FOIRequests@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.

Yours sincerely

S Bryant
Policy Manager
European Operational Policy Team
North West region
UK Border Agency

Annex A to original response

We have noted in the case of this request that the information you have requested has not yet been completed or been through the required approval process. We believe that this is a relevant consideration in terms of withholding the remaining chapters of the European Casework Instructions.

In reaching this conclusion we have taken into account the following:

It is important that the public have access to information about how UKBA staff are

required to handle applications made under the Immigration (European Economic Area), Regulations 2006 not least to assure them that this legislation is being fully implemented.

Immediate disclosure would allow those who have made applications made under the Immigration (European Economic Area) Regulations 2006 to obtain detailed information which allows them to assess whether the applications they made have been dealt with properly.

However there are also public interest reasons for maintaining the exemption to the duty to communicate which weigh in favour of it being reasonable to require you to wait for publication. We have considered the following:

There is a strong public interest in permitting UKBA to publish guidance in a manner and form of its own choosing which would be undermined by immediate disclosure.

Publication would undermine UKBA's established pre-publication procedures, which includes internal consultation about the final guidance being established in this particular version of the guidance, and also being able to use its staff resources effectively in a planned way so that reasonable publication timetables are not affected.

Unnecessary public concern could be caused by premature disclosure of parts of the guidance which are still undergoing revision ahead of publication. After balancing these conflicting arguments, we have concluded not only that it is reasonable to require you to wait for publication but also that the balance of the public interests identified favours maintaining the exemption. This is not least because we believe that in this case the overall public interest lies in favour of ensuring that UKBA is able to plan its publication of information contained within the European Casework Instructions in a managed and coherent way, and this would not be possible if immediate disclosure were made.

Annex B to original response

The use of exemption 31(1)(e) also requires us to consider whether in all circumstances of the case the public interest in maintaining this exemption outweighs the public interest in disclosing the information.

We have considered the public interest in disclosing the information you have requested.

Disclosure of such information would increase the transparency of the work of UKBA and the Immigration Service. There is also a public interest in ensuring that there is public confidence in the operation of our immigration controls, through access to casework instructions, and disclosure would allow the public to assess the effectiveness of the methods employed to assess those seeking to enter or reside in the United Kingdom.

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 those seeking to evade immigration controls, are unable to do so. Through being able to access information within the casework instructions, such offenders may be able to evade detection.

We have considered whether in all 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 identified lies in favour of maintaining the exemption because it is in the overall public interest that that UKBA is able to maintain the integrity of its immigration controls.”