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Mr Gary Burgess  
[request-36917-59a19c81@whatdotheyknow.com](mailto:request-36917-59a19c81@whatdotheyknow.com)

3 December 2010

Dear Mr Burgess

**Freedom of Information request (our ref. 15968): Internal review**

Thank you for your e-mail of 10 September 2010, in which you asked for an internal review of our response to your Freedom of Information (Fol) request about the Certificate of Sponsorship (CoS) for software engineers. I apologise for the length of time it has taken to respond to you.

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 conclusion is that the original response was partially correct. Section 41(1)(b) was found to be engaged but not section 43(2).

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your Fol 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

**Gloria Akinyemi**  
**Information Access Team**

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Gary Burgess reference 15968

**Responding Unit: UK Border Agency**

### **Chronology**

Original Fol request:	16 August 2010
Acknowledgement:	31 August 2010
UK Border Agency response:	9 September 2010
Request for internal review:	10 September 2010

### **Subject of request**

1. Mr Burgess requested the following information following on from the data disclosed in a previous Fol request (15731) regarding the certificate of sponsorship for software engineers (exact wording):

Is it possible for you to provide the free text values for the salaries and allowances for each record so that I can convert to numbers and calculate the averages, please? e.g. for each record Post Code, Occupation, job title, salary, allowance.

### **The response by UK Border Agency**

2. The response to Mr Burgess explained that the UK Border Agency held this information but it would not be disclosed. UKBA explained that the information was exempt from disclosure under section 41(1)(b) of the Fol Act which exempts information if it is provided in confidence and disclosure would result in an actionable breach of confidence; and section 43(2) which exempts information if its disclosure would be likely to prejudice the commercial interests of any persons.

### **The request for an internal review**

3. Mr Burgess stated that the Home Affairs Select Committee, MAC and UKBA have been holding consultations on the proposed cap. Mr Burgess declared that the impact on public services of migration and fiscal contribution of migrants workers is a key part of these, and it

was in the public interest that this information is made available.

Mr Burgess also requested information for all of inner London, without post codes, so that the identity of individuals and sponsors cannot be inferred.

### **Procedural issues**

4. Mr Burgess made his initial request on 16 August 2010. Receipt of the request was sent on 31 August 2010 and a response was sent to Mr Burgess within the 20 working day limit, therefore there is no procedural breach of section 10(1) of the FoI Act.
5. UKBA informed Mr Burgess that the requested information was held but would not be disclosed to him. In this respect UKBA is noted to have successfully discharged its obligations under section 1(1)(a) and section 1(1)(b) of the Act.
6. Mr Burgess was informed in writing of his right to request an independent internal review of the handling of his request, as required by section 17(7)(a) of the Act.
7. The response did inform Mr Burgess of his right of complaint to the Information Commissioner, as set out in 17(7)(b) of the Act.

### **Consideration of the response**

8. UKBA's response of 9 September explained that UKBA were not able to provide the information requested and the exemptions at sections 41(1)(b) and 43(2) were engaged. The application of these exemptions is examined below.

#### **Section 41 (1) (b)**

9. UKBA informed Mr Burgess that the requested information was exempt as it was provided in confidence. UKBA stated that section 41(1)(b) of the Act was engaged on the grounds that disclosure of the requested material would result in an actionable breach of confidence. Section 41 of the FoI act states that disclosure of the information to the public otherwise than under this act by a public authority holding it would constitute a breach of confidence actionable by that or any other person.
10. Specifically, UKBA stated that when releasing statistical information into the public domain, information pertaining to individual applications is held in confidence. The disclosure of the information requested by Mr Burgess would result in a breach of confidence.

- 11 UKBA explained to Mr Burgess that the assurance of confidentiality was guaranteed to all companies who had provided information to UKBA. The confidentiality assurance states

*Information will not be passed to anyone other than government departments, agencies, or local authorities, where this is necessary to enable them to carry out their functions.*

- 12 UKBA did inform Mr Burgess sponsor ratings were published on the UKBA website. This is a transitional rating awarded by UKBA to a sponsor who is under a sponsorship action plan.
- 13 Taking the above into account, it is clear that the information requested has been provided from companies who had an understanding, that this information was confidential and would not be disclosed by UKBA.
- 14 It would also be reasonable to assume that the breach of the confidentiality agreement may be actionable by a company, as it would have significant detriment on sponsor company's resources.
- 15 On the strength of the argument outlined by UKBA and for the reasons outlined above, I am satisfied that the exemption at section 41(1)(b) of the Act was correctly engaged by UKBA.
- 16 As the exemption at section 41(1)(b) of the Act is an absolute exemption no public interest considerations apply.

#### Section 43(2)

- 17 Section 43(2) is a qualified exemption which means that information can only be withheld if the public interest in favour of withholding the information outweighs the public interest in releasing the information. UKBA carried out a full public interest test and explained in its response to Mr Burgess that while it recognised that there was a public interest in disclosure of this information, releasing it into the public domain would prejudice the commercial interests of UKBA's Tier 2 sponsors.
- 18 UKBA informed Mr Burgess, that releasing this information would have a detrimental effect on the sponsors day to day business and could damage sponsors companies interests.
- 19 UKBA applied section 43(2) erroneously. UKBA believed the disclosure of this information, could identify sponsors, however during the internal review I established that this was inaccurate, as sponsors could not be identified from the information requested by Mr Burgess.

## **Conclusion**

- 20 UKBA's response of 26 August 2010 was provided within the 20 working day limit, meeting the requirements of section 10(1) of the FoI Act.
- 21 On the strength of the argument as outlined by UKBA, I am satisfied that the exemption at section (41)(1)(b) of the Act was correctly engaged. Disclosure of the information would breach the confidentiality assurance that UKBA guarantees its Tier 2 sponsors.
- 22 UKBA provided erroneous information to Mr Burgess. Section 43(2) does not apply to Mr Burgess's request as the sponsors companies could not be identified if the information was disclosed.
- 23 I am satisfied that UKBA considered the request for information fully and conclude that the overall response to Mr Burgess was correct, in that the information was exempt from disclosure under section 41(1)(b) of the FoI Act. UKBA informed Mr Burgess that the information was held, and provided an explanation as to why this information was exempt from disclosure.
- 24 There was no procedural breach of section 17(7)(a) and 17(7)(b) as Mr Burgess was informed in writing of his right to an independent review and his right of complaint to the Information Commissioner.
- 25 Mr Burgess also requested if the information provided to him previously could now be provided to him in free text values format. Section 11(4) of the FoI Act states that a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances. As this information has already been provided to Mr Burgess in a excel spreadsheet, this can be viewed as an accessible format which can be amended by Mr Burgess to suit his preference.

**Gloria Akinyemi**  
**Information Access Team**  
**Home Office**  
**3 December 2010**