



Home Office

Information Rights Team
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Mr Andrew Chandler,
By e-mail to:
request-297549-da3a6ae9@whatdotheyknow.com

23 February 2016

Dear Mr Chandler

Freedom of Information request (our ref: 37144): internal review

Thank you for your e-mail of 4 November 2015, in which you asked for an internal review of our response to your Freedom of Information (Fol) request about the closure of Dover Immigration Removal Centre.

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. 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 incorrect in that the withheld information did not fall within the scope of the request and in fact, the Home Office does not hold any information relevant to the request.

There was no report or review leading to the closure of Dover IRC. The immigration detention estate is kept under constant review which includes discussions between the Home Office and the National Offender Management Service (NOMS). The decision to close Dover as with other NOMS owned sites were part of these regular discussions. Returning older establishments such as Dover to NOMS is in line with the Home Office objectives to create an estate of modern, secure centres.

Yours sincerely

B Dorrington
Information Rights Team

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Andrew Chandler (reference 37144)

Responding Unit: Immigration Enforcement (IE)

Chronology

Original Fol request: 19 October 2015

IE's response: 4 November 2015

Request for internal review: 4 November 2015

Subject of request

1. The request asked for a copy of the report that led to the Home Office handing back Dover Immigration Removal Centre (IRC) to the Ministry of Justice on 15 October 2015. For the full text of the request see **Annex A**.

The response by IE

2. The response stated that information was held, but was exempt from disclosure by virtue of section 35(1)(a). For the full text of the response see **Annex B**.

The request for an internal review

3. The internal review request stated that Mr Chandler did not agree with the decision to transfer the Dover IRC back to the Ministry of Justice, and gave the reasons for this opinion. For the full text of the internal review request see **Annex C**.

Procedural issues

4. The Home Office received request via email on 19 October 2015.
5. On 4 November 2015 the Home Office provided Mr Chandler with a substantive response, which represents 12 working days after the initial request. Therefore, the Home Office complied with section 10(1) by providing a response within the statutory deadline of 20 working days.
6. The response stated that information was held relating to the request, but was exempt from disclosure by virtue of section 35(1)(a). This was incorrect.
7. Mr Chandler 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.
8. The response also informed him of his right of complaint to the Information Commissioner, as set out in section 17(7)(b) of the Act.

Consideration of the response

Use of exemptions

9. The response informed Mr Chandler that the requested information was held, and that it was exempt from disclosure by virtue of section 35(1)(a). However, having viewed this information, I find that it does not fall within the scope of the request. Therefore, section 35(1)(a) was incorrectly applied. The request was misinterpreted and there was no report or review, as I

have explained the immigration detention estate is kept under constant review which includes discussions between the Home Office and the National Offender Management Service (NOMS).

10. The information which was incorrectly considered to be in scope consisted of internal communications discussing the announcement of the closure and the timing of this. This information does not relate to the decision to close the IRC. It also does not contain any information relating to a report or review of Dover and therefore it is out of scope of your request.
11. Section 35(1)(a) was cited in relation to that information as it was considered to be formulation of Government policy. However, it is my view that, if it had been within scope of your request, it would have been exempt from disclosure, subject to the opinion of a Minister, by virtue of section 36(2)(b)(i) and 36(2)(b)(ii) as it relates to the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation.

Conclusion

12. The response was sent within 20 working days; consequently the Home Office complied with section 10(1) of the FOI Act.
13. The Home Office failed to comply with section 1(1)(a), as the response incorrectly stated that the requested information was held.
14. The Home Office was in breach of section 17(1)(a), 17(1)(b) and 17(1)(c) as it incorrectly relied on an exemption to withhold information when that information was not in the scope of the request.
15. The response complied with the requirements in section 17(7)(a) and 17(7)(b) as it provided details of the complaints procedure.

Information Access Team
Home Office
23 February 2016

Annex A – full text of request

Could I please have a copy of the report/review that was carried out that lead to the Home Office handing Dover immigration removal centre back to the ministry of justice on 15th October 2015

Annex B – full text of the response letter

Thank you for your email dated 19 October 2015 regarding Dover immigration removal centre (IRC). Your request has been handled as a request under the Freedom of Information Act 2000. You have asked the following:

“Could I please have a copy of the report/review that was carried out that lead to the home office handing Dover immigration removal centre back to the ministry of justice on 15th October 2015”

I can confirm that the Home Office holds the information that you have requested. However, after careful consideration we have decided that the information is exempt from disclosure under section 35(1)(a) of the Freedom of Information Act.

Section 35(1)(a) provides exemption for information relating to the formulation or development of Government policy. The information that you have requested falls within the scope of this exemption. Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion are set out in the attached Annex.

We do, however, keep our detention estate under constant review, considering future requirements including capacity and location. Dover is a former National Offender Management Service (NOMS) site and not a purpose built IRC. Returning older establishments such as Dover and Haslar back to NOMS is in line with our objectives to create an estate of modern, secure centres.

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 37144. 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 4 Floor, Peel Building
2 Marsham Street
London SW1P 4DF
E-mail: info.access@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.

Annex A to letter

Section 35(1)(a) – Formulation of Government Policy

Public Interest Test

Considerations in favour of disclosing the information

The use of this exemption requires us to consider whether in all the circumstances of the case the public interest in maintaining the exemption stated above outweighs the public interest in disclosing the information. There are public interest considerations for disclosing policy considerations in order to increase transparency of government decision making and provide greater accountability. Disclosure may also promote understanding of how the rules on this matter are formulated and the rationale behind them as well as increase the trust between the Home Office and the public.

Considerations in favour of withholding the information

However, in this instance there are also specific considerations in favour of maintaining the exemption in order to protect the Government policy formulation process. Good government depends on good decision making and this needs to be based on the best advice available and on full consideration of all the options. The advice obtained during the formulation of this policy is broad ranging and disclosure may be a deterrent on those officials providing their views and advice if it might be disclosed. In addition, Ministers and officials need to be free to conduct rigorous and candid assessments of their policies and programmes including the advantages and disadvantages of any available options. The disclosure of documents revealing such assessments might undermine the frank exchange of departmental views and therefore undermine collective decision making.

We have considered whether in all the circumstances the public interest in maintaining the exemption outweighs the public interest in disclosing all the information you have requested. We have concluded that the balance of the public interests identified lies in favour of maintaining the exemption as there is a greater overall public interest in ensuring that officials and Ministers have the space to develop policy and consider all possible options.

Annex C – full text of the internal review request

I am writing to request an internal review of Home Office's handling of my FOI request 'Closure of Dover immigration removal centre'.

There are other IRC's within the estate that came on line after Dover and were NOMS establishments. These are also long distances away from the airports. Dover i would think had plenty of business from the port of Dover which makes no sence to close it. The extra expense of having to transport detainees to London also makes no sence.

A full history of my FOI request and all correspondence is available on the Internet at this address:
https://www.whatdotheyknow.com/request/closure_of_dover_immigration_rem

Annex D – complaints procedure

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