

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Riaz Sobrany (reference 29264)

Responding Unit: Immigration & International Policy Group

Chronology

Original Fol request:	10/10/13
Immigration & International Policy Group response:	04/11/13
Request for internal review:	09/12/13

Subject of request

1. Mr Sobrany is seeking details concerning contact between Syed Talha Ahshan, the National Autistic Society and the Home Office. Full details of the questions can be found at **Annex A**

The response by Immigration & International Policy Group

2. On 4th November 2013 Immigration & Borders Policy Group (IBPD) responded to Mr Sobrany, a copy of which can be found at **Annex B**

Mr. Sobrany's request for an internal review

3. On 9th December 2013 Mr Sobrany submitted a request for an internal review, a full copy of which can be found at **Annex C**

Procedural issues

4. On 4th November 2013 IBPD provided Mr Sobrany with a substantive response, which represents 17 working days after the initial request. Therefore, IBPD complied with section 10(1) by providing a response within the statutory deadline of 20 working days.
5. IBPD response of 4th November informed Mr Sobrany 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.
6. Furthermore, the response informed Mr Sobrany in writing of his right of complaint to the Information Commissioner as required by Section 17(7) (b) of the Act.

Consideration of the response

7. The response provided an explanation in relation to question 3 of Mr Sobrany's request regarding the evidence held by the United States in the case of Syed Talha Ahsan. The Home Office neither confirmed nor denied whether any information was held within the scope of the remaining questions, applying section 40(5) of the FOI Act.
8. As noted, Mr Sobrany's request for an internal review is concerned principally with his dissatisfaction with the application of the exemption under section 40(5) of the Act to his request.
9. This exemption says that the duty to confirm or deny (i.e. whether information is held) does not arise if confirmation or denial would contravene any of the data protection principles (there are other circumstances' in which section 40(5) applies, but they are not relevant here).
10. In order to determine whether the exemption under section 40(5) was legitimately engaged by IBPD it is necessary to establish whether we could confirm or deny whether the information is held without contravening any of the data protection principles. The most relevant principle in this context is the first principle, which requires that that personal data must be processed fairly and lawfully ('processed' includes disclosure).

The Data Protection Act defines personal data as that which relates to a living individual who may be identified:

- a) from those data, or
 - b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect to the individual.
11. Given the nature of the information requested, to confirm or deny whether information is held by the Home Office would in either case disclose personal data relating to Syed Talha Ahsan. Mr Sobrany argues that if Q2 is taken out, the Data Protection Act no longer applies. Following careful consideration of the context of the other questions, I am satisfied that they still fall within personal information relating to Syed Talha Ahsan. The first data protection principle says (among other things) that data shall not be processed unless at least one of the conditions in Schedule 2 to the Data Protection Act is met. Only the first and sixth conditions can be relevant in the context of a Freedom of Information request. These are, in summary, that:
- a. The data subject has given consent to the processing (condition 1).

- b. The processing is necessary for the purpose of the legitimate interests of the data controller or a third party (unless the processing is unwarranted because it would prejudice the rights and freedoms or legitimate interests of the data subject) (condition 6).
- 12. I do not consider that either of these conditions is met in this case and so to confirm or deny whether the information is held would contravene the first data protection principle. The exemption at section 40(5) therefore applies and IBPD were correct in their response to neither confirm nor deny whether the requested information is held.
- 13. This response should not be taken to mean that the information requested is or is not held by the Home Office.

Conclusion

- 14. The response was sent within 20 working days, therefore IBPD complied with section 10(1) of the FOI Act
- 15. IBPD complied with sections, 17(1)(a), 17(1)(b) or 17(1)(c), as the response specified the exact exemption in question it relied upon and provided sufficient detail as to why that exemption was applied.
- 16. IBPD correctly applied S40 (5) of the Act.

**Information Access Team
Home Office
January 2014**

Annex A

Dear Home Office,

This is a freedom of information request concerning Syed Talha Ahsan, a British citizen with Asperger syndrome who was extradited to the United States of America in October 2012.

- 1) Was any contact made between the Home Office and the National Autistic Society concerning Syed Talha Ahsan?
- 2) If the answer to question 1) is yes, which department of the Home Office and which personnel of that department had contact with which personnel of the National Autistic Society?
- 3) Has the Home Office seen all the evidence held by the United States in the case of Syed Talha Ahsan?
- 4) If the answer to question 3) is yes, was any of this evidence forwarded to the National Autistic Society?
- 5) Can I please have copies of any correspondence between the Home Office and the National Autistic Society concerning Syed Talha Ahsan.

Yours faithfully,

Riaz Sobrany

Annex B

Dear Mr Sobrany,

YOUR REQUEST FOR INFORMATION IN RELATION TO SYED TALHA AHSAN

Thank you for your email of 10 October 2013, in which you ask for information regarding Syed Ahsan who was extradited to the United States in October 2012. Your request has been handled as a request for information under the Freedom of Information Act 2000 ("the Act").

You have requested the following information:

1. Was any contact made between the Home Office and the National Autistic Society concerning Syed Talha Ahsan?
2. If the answer to question 1 is yes, which department of the Home Office and which personnel of that department had contact with which personnel of the National Autistic Society?
3. Has the Home Office seen all the evidence held by the United States in the case of Syed Talha Ahsan?
4. If the answer to question 3 is yes, was any of this evidence forwarded to the National Autistic Society?
5. Copies of any correspondence between the Home Office and the National Autistic Society concerning Syed Talha Ahsan.

The information requested in Questions 1, 2, 4 and 5 would be considered personal information as defined in the Data Protection Act 1998. We can neither confirm nor deny whether we hold the information you have requested by virtue of Section 40(5)(a) and (b)(ii) (personal information) of the Act. These sections of the Act absolve us from the requirement to say whether or not we hold information. To confirm or deny that information was held would, in itself, be a statement about individuals, which in turn would be impermissible as this would breach a data protection principle.

Section 40 is an absolute exemption and therefore does not require a Public Interest Test.

This response should not be taken as conclusive evidence that the information you have requested is or is not held by the Home Office.

In response to Question 3, the Home Office has not seen all the evidence held by the United States with regard to the case against Mr Ahsan. UK extradition law specifies the documents which are required in support of an extradition request; it is for the courts to decide in each case whether the correct documents have been submitted. The matters to be assessed by

Ministers or the Courts when considering whether a person should be extradited are not whether a person is guilty or innocent but whether any of the statutory bars to surrender in the Extradition Act 2003 apply. The requirements for non European Arrest Warrant cases are set out under Part 2 of the Extradition Act 2003.

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 **29264**.

Information Access Team
Home Office
Ground Floor, Seacole 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 colleagues 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 FoI Act.

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

Yours sincerely,

Amanda Shiels
International and Immigration Policy Group

Annex C

-----Original Message-----

From: Riaz Sobrany [<mailto:request-180623-8af4e04f@whatdotheyknow.com>]

Sent: 08 December 2013 22:49

To: FOI Responses

Subject: Internal review of Freedom of Information request - Correspondence between the Home Office and the National Autistic Society concerning Talha Ahsan

Dear FOI Responses,

Please forward this to the person who conducts Freedom of Information reviews.

I consider your response to be most unsatisfactory. If Q2 is taken out then the Data Protection Act no longer applies. All I want is a straightforward yes or no answer for Q1, and a no also answers Q4 and Q5. If the answer to Q1 is yes, then please can I have copies of any correspondence between the Home Office and the National Autistic Society concerning Syed Talha Ahsan.

Yours sincerely,
Riaz Sobrany

Annex D

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