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Mr Wayne Pearsall
[request-147758-
ff5e533b@whatdotheyknow.com](#)

6th June 2013

Dear Mr Pearsall

Freedom of Information request (our ref. 26866): internal review

Thank you for your e-mail of 10 April 2013, in which you asked for an internal review of our response to your Freedom of Information (Fol) request about Zambrano applications.

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 original response was correct to withhold the information from you, although we were at fault in engaging one of the exemptions. Section 22(1) was incorrectly engaged on the information and therefore the application of this exemption has been overturned.

However section 36(2)(c) by virtue of section 36(4) was correctly engaged and the information will continue to be withheld. Furthermore I have investigated the answer provided in response to question three of your request. Unfortunately this question cannot be answered with a straightforward date, due to the way applications are processed. We are therefore unable to provide you with one. Details of this and explanations for all the decision taken in this case can be found in the attached report.

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

M Riddle
Information Access Team

Switchboard 020 7035 4848

E-mail info.access@homeoffice.gsi.gov.uk

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Mr Wayne Pearsall (reference 26866)

Responding Unit: Former UK Border Agency - North West Correspondence Team – (UKBA)

Chronology

Original Fol request:	18/3/2013
Acknowledgement:	19/3/2013
UKBA response:	10/4/2013
Request for internal review:	10/4/2013

Subject of request

1. On 18 March 2013, Mr Pearsall submitted a Freedom of Information request asking for the following information:
 - How many zambrano applications have been approved since the start of 2013 (1st jan).
 - how many zambrano applications have been denied since 1st jan.
 - At which date are the UKBA currently working on cases from (IE: applications from which month submitted)

The response by UKBA

2. The response informed Mr Pearsall that the information he requested under questions 1 and 2 was withheld under sections 22(1) (information intended for future publication) and Section 36(2)(c) (prejudice to the effective conduct of public affairs) by virtue of section 36(4).
3. The following answer was provided to answer Mr Pearsall's third question:
"case workers have commenced deciding applications made under the Zambrano ruling. As far as possible, these are dealt with in date order of application."

Request for an internal review

4. Mr Pearsall made an internal review request as he did not feel his questions were correctly answered. Mr Pearsall stated that the information requested for question three was not provided.
5. Furthermore Mr Pearsall disagreed with the exemptions cited to withhold the information for his first two questions. He argues that the public interest is in releasing the information now rather than await publication.
6. Mr Pearsall also stated that an internal review to his response is also overdue.

Procedural issues

7. The original request was received on 18 March 2013 and a response was issued on 10 April 2013. This represents a period of 15 working days between receipt of the request and the response being issued. This means that the response was inside the target deadline of 20 working days as specified in section 10(1) of the Act.
8. Mr Pearsall makes comment that an internal review request for this case is overdue.
9. I confirm the Home Office did not receive an internal review request until 10 April 2013 for this case (26866). Furthermore upon examination of the page on Whatdotheyknow.com where Mr Pearsall's communications are published (<http://www.whatdotheyknow.com/request/ee...>), I can find no evidence that any prior internal review for this case was submitted. However, there are a number of different cases recorded on this page on the website from Mr Pearsall, which have had internal reviews requested.
10. Mr Pearsall was informed in writing of the right to request an independent internal review of the handling of the request, as required by section 17(7)(a) of the Act. The response also informed Mr Pearsall of the right of complaint to the Information Commissioner, as set out in 17(7)(b) of the Act.

Consideration of the response

11. Mr Pearsall believes that his third question remains unanswered. The team who handled the response has provided the following further explanation.
12. All cases received are logged at the time of receipt and then worked on concurrently. They are taken through the procedures with each case progressing according to its individual circumstances. For this reason cases received on any single date will be at many different points in the overall procedure. There is, therefore, no single date for cases that are currently being worked on. The formal answer to this part of your request, therefore, is 'information not held'. To be helpful, however, I can state that at the beginning of June 2013 the date range of 'Zambrano' cases pending a decision includes cases received from April 2011 to the present. The cases from 2011 are being considered now and those from 2012 will be considered next.
13. Mr Pearsall also disagreed with the use of section 22(1) and 36(2)(c) by virtue of 36(4) to withhold the requested information. He argues that the "public interest far outweighs your proposed publication timetable".

Section 22(1)

14. I find section 22 not to be engaged. Although the specific information requested may form part of the final figures intended to be published, I can confirm the specific figures will not be separately identifiable. Therefore as the information intended to be published will not answer the request made, section 22 is not engaged.

Section 36(2)(c)

15. The figures requested make up part of the information on migration that will be published at the following link.
<https://www.gov.uk/government/organisations/home-office/series/migration-statistics>.
16. Section 36(2)(c) provides that information can be withheld, where the release of

information would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs. This effectively covers information that if disclosed, would adversely affect the delivery of effective central government and public services.

17. Where a subset of data is being specifically requested which forms part of a larger report or publication but in itself is not planned to be published, it is sometimes termed a 'mosaic' type request; i.e. requests could be repeatedly made to build up an accurate picture of the overall data due to be published. There are also strict rules under the UK Statistics Authority's code of practice on not disclosing, or even providing an indication of, data and results prior to publication. This includes immigration statistics which are national statistics which must follow the guidelines for such planned publications.
18. Although information is being requested in relation to a limited time frame, and the department is assured that the individual requesting the information is not interested in making subsequent 'mosaic' types of requests, the issue here is that were the information released, we would be showing a willingness to disclose to anyone. This would then present an opportunity for other individuals to submit additional 'mosaic' requests ahead of the planned publication of the final report. Therefore in line with the arguments above, the exemption under section 36(2)(c) is engaged.
19. Section 36(2)(c) requires a public interest test argument as set out below.

Considerations in favour of disclosing the information

The public have an interest in current information and statistics relating to the control of immigration in the United Kingdom. This adds to the desirability of citizens being confident that decisions are taken on the basis of the best available information.

Considerations in favour withholding the information

Ministers and their officials need to be able to think through all the implications of particular options. In particular, they need to be able to undertake rigorous and candid assessments of the risks to particular programmes and projects. They need to assess statistical material in a safe environment and be free to base and adjust policy options accordingly. Premature disclosure of preliminary statistics without adhering to established pre-publication procedures, (which includes internal consultation about the final statistics being established on the Gov.uk website), could prejudice the department when reporting on statistics outside of pre-planned publishing practices. This prevents the department from being able to use its staff resources effectively in a planned way, so that reasonable publication timetables are not affected.

20. In normal circumstances the application of section 36(2)(c) requires a 'qualified person' to make a decision on whether disclosure would or would be likely to have the prejudicial or inhibiting effects specified. In the case of the Home Office that person is a minister. However section 36(4) states that:

"In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".
21. Therefore as this case relates to statistical information, section 36(2)(c) was applied without the decision being taken by a 'qualified person'.

22. Once the main statistics are published, the exemption under section 36(2)(c) will expire and the information is then likely to be releasable.

Advice and assistance

Vexatious requests

23. Section 14 of the Act states:

Vexatious or repeated requests.

(1)Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2)Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

24. Having examined Mr Pearsall's other recent requests in conjunction with this review, I feel that it is fair to point out that the subject matter, volume, and frequency of his requests (considering the number of requests submitted in such a small time frame) is such that they are approaching the criteria required to regard them as vexatious. It is possible that further requests from Mr Pearsall will be refused under this section of the Act.

Conclusion

25. There was no procedural breach of section 10(1). The reply was issued within the 20 day deadline.
26. The department was not in breach of section 1(1) (a) as the department correctly confirmed it held all the requested information.
27. Section 22(1) was applied incorrectly. This has been overturned.
28. Section 36(2)(c) was applied correctly to withhold the requested information.
29. The department failed to answer question 3 with a suitable response.
30. I am satisfied there was no procedural breach of section 17(7) (a) and 17(7) (b).

Information Access Team
Home Office
6/6/2013

Annex A – Original Request in full

FOI request for information:

How many zambrano applications have been approved since the start of 2013 (1st jan).

how many zambrano applications have been denied since 1st jan.

At which date are the UKBA currently working on cases from (IE: applications from which month submitted)

Yours sincerely,

Annex B – Response in full

Dear Mr. Pearsall,

Thank you for your e-mail of 18th March 2013 in which you ask for information concerning residence cards issued under the Zambrano ruling. Your request has been handled as a request for information under the Freedom of Information Act 2000.

I am able to inform you that the centre for deciding residence card applications in the UK Border Agency is based in the North West and therefore the information released to you has been taken from the team responsible within this area.

For ease of reference I have listed each question separately, with the answer beneath.

- 1. How many Zambrano applications have been approved since the start of 2013 (1st Jan)?**
- 2. How many Zambrano applications have been denied since 1st Jan 2013?**
- 3. At which date are the UKBA currently working on cases from (i.e. applications from which month submitted)?**

With regards to question 3, I am able to disclose that case workers have commenced deciding applications made under the Zambrano ruling. As far as possible, these are dealt with in date order of application.

Figures on the issue and refusal of residence documentation to EEA nationals and their family members, by country of nationality, are due to be published on 29 August 2013.

As the number of decisions on Zambrano applications constitutes a subset of data intended for future publication, I have decided not to communicate information on such cases to you at this time, (in response to questions 1 and 2) pursuant to the exemptions under sections 22(1) and 36(2)(c) referring also to Section 36(4) of the Freedom of Information Act 2000.

The use of these exemptions requires consideration of whether it is:

- Reasonable in all the circumstances not to produce the information until the end of August 2013, and
- 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.

This is a two stage test but the central issue is whether in all the circumstances it is reasonable and in accordance with the public interest to require you to wait until the end of August 2013.

We recognise there may be a public interest in producing this information for you now and that this may also weigh in favour of it being unreasonable to make you wait. We have considered the following:

- It is important that the public have access to immigration statistics. Home Office staff are required to handle requests made under the Freedom of Information Act 2000, not least to assure them that this legislation is being fully implemented.

But 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 until the end of August 2013. We have considered the following:

- Publication would undermine Home Office established pre-publication procedures, which includes internal consultation about the final statistics being established on the Home Office website, and also being able to use its staff resources effectively in a planned way so that reasonable publication timetables are not affected.

After balancing these conflicting arguments, we have concluded not only that it is reasonable to require you to wait until the end of August 2013, 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 the Home Office is able to plan its publication of information in a managed and coherent way, and this would not be possible if immediate disclosure were made.

In keeping with the Freedom of Information Act, 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 26866. 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: 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.

Yours sincerely

Annex C – Internal Review request

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

I am writing to request an internal review of UK Border Agency's handling of my FOI request 'EEA Family Permits (Wife & Mother of British Citizens)'.

Ref: 26866...

I asked at which date the UKBA are working on applications from... this information was not provided.

The exemption for publication i feel does not stand... this is a very big issue - with the obvious number of applications in with ukba at the current time, it is clear that public interest far outweighs your proposed publication timetable... - it would inconvenience us to have to wait for your response...

I also remind you that my response to my internal review is also overdue...

A full history of my FOI request and all correspondence is available on the Internet at this address:

<http://www.whatdotheyknow.com/request/ee...>

Yours faithfully,