

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Robert Simpson (reference 19621)

Responding Unit: Visa Services Directorate (VSD) – UK Border Agency (UKBA)

Chronology

Original Fol request:	10 August 2011
Acknowledgement:	10 August 2011
UKBA response:	2 September 2011
Request for internal review:	6 September 2011

Subject of request;

1. Mr Simpson requested the following under the Freedom of Information Act (FOIA) 2000.

I would like to have the following information about each OPI:

1. FCO's eGram identifying reference (where available)
2. UKBA's OPI identifying reference (e.g. an OPI number)
3. Distribution list (including which overseas offices, and which staff within the office (e.g. all visa staff, all risk assessment staff or all staff))
4. Dispatch Date
5. Summary (this may also be known as the "executive summary" or "description" or "brief description" or something similar)
6. Title (this may also be known as Subject or something similar)

The response

2. The UKBA response was:

I can confirm that the International Group holds the information relating to your request. However, we have decided not to release this information to you, under section 31(1)(e) of the Freedom of Information Act 2000.

Request for an internal review

3. On 6 September 2011, Mr Simpson asked for an Internal Review regarding the response to his FOI request. Mr Simpson stated:

My request has been denied in full. UKBA have said that my request would or would likely “prejudice the operation of immigration controls”. While it may be possible that a small part of my request might in some cases do that, it is a little beyond belief that all parts of my request do so for all requested OPIs.

Procedural issues

4. Mr Simpson submitted his request via e-mail on 10 August 2011. UKBA acknowledged his request on the 10 August. Whilst it is not a requirement to send an acknowledgement under the Act, it is considered good practice to do so.
5. Mr Simpson received a response to his request on 2 September. This represents a period of 16 working days between receipt of the request and the final response being issued. Therefore the UKBA response was within the deadline of 20 working days, and compliant under section 10(1) of the Act.
6. UKBA confirmed that the Home Office held information regarding Mr Simpson’s request. Therefore, UKBA adhered to section 1(1)(a) of the Act.
7. UKBA cited section 31(1)(e) (Law Enforcement) in regards to Mr Simpson’s request. UKBA explained why this exemption applied and subsequently weighed the Public Interest Test (PIT) required for the citation. UKBA therefore adhered to section 17(1)(a), (b) and (c) of the Act. However this is made redundant, as having consulted with colleagues that provided the response of 2 September, it is apparent that the information requested by Mr Simpson was not fully collated and considered prior to the application of section 31(1)(e) of the Act. This has a direct and significant bearing on the handling of Mr Simpson’s request as in order for an exemption under the Act to be properly applied, the information it pertains to must be collated and reviewed *prior* to consideration of the applicability of the exemption in question.
8. Mr Simpson 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.
9. The response also informed Mr Simpson of his right of complaint to the Information Commissioner, as specified in section 17(7)(b) of the Act.

Consideration of the response

10. Mr Simpson questioned the response to his request, as he felt that only a very small part of what he requested would be exempt from disclosure.
11. In order to properly review the legitimacy of the application of section 31(1)(e) towards Mr Simpson’s request, it would be necessary to first collate all of the information being sought.

12. At this point it should be noted that distinct from the exemptions against disclosure set out in sections 21 to 44 of the Act there are also a number of procedural conditions that govern the right of access to information under the Act. When handling an information request under the Act, careful consideration must first be given to all such procedural conditions before consideration is given to any qualified or absolute exemptions.
13. Having undertaken as part of this review to collate and consider the information sought by Mr Simpson, it is clear that identification and retrieval of the material in question cannot be achieved within the designated cost limit set out at section 12(1) of the Act. Section 12(1) of the Act is one of the procedural access conditions referred to in paragraph 12 above.
14. The provisions of section 12(1) specify that a public authority need not comply with a request for information if to do so would exceed the appropriate limit. For government departments such as the Home Office the cost limit is £600. This figure is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information and preparing the response can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.
15. In this instance, large numbers of documents and files would need to be searched in order to identify, locate and extract all of the information in scope of Mr Simpson's request. UKBA would have no means of satisfying this request within the designated cost limit of the Act.
16. It is important to note that the application of section 12(1) of the Act towards Mr Simpson's request does not imply that section 31(1)(e) would not apply to the requested information were it accessible within the cost limit. Instead, the point being made is that there are provisions under the Act (such as the cost or time taken to find and retrieve data) that must necessarily be considered prior to the application of any exemption against disclosure.
17. In addition to the above points, I note Mr Simpson made the following point when making his request:

If this set of eGrams is too large to provide in its entirety, I would like to request as many of those eGrams, working back in time from today, that can be generously provided within my £600 limit.

18. The Home Office does not have a duty to search up to the cost limit (as stated in [Cooksey v ICO and Chief Officer of Greater Manchester Police \(EA/20100113\)](#)) when there is a reasonable estimate that to gather all of the information in scope of a request would breach the cost limit. The judgment in *Randall v Information Commissioner* and Medicines and Healthcare Products Regulatory Agency also states:

“the effect of section 12 is not to impose a limit, leaving the authority obliged to carry out work up to that limit; it is to remove the information from the scope of the section 1 duty to disclose altogether”.

19. It could also be argued that any request that includes this kind of wording could be interpreted as not being ‘a well defined request for information’.

Advice & Assistance

20. In light of the fact that Mr Simpson’s request can not be answered within the cost limit, he may wish to refine his request in order to increase the chances of it falling within the cost limit. Mr Simpson may wish to specify a particular subject he is interested in, or he may wish to revise his request to a specific time frame.

Conclusion

21. UKBA complied with section 10(1) as a response was issued within the 20 working days deadline.
22. UKBA complied with section 10(3) and 17(3) of the Act as they informed Mr Simpson that consideration of the public interest was required for sections 31(1)(e). However this is made redundant as the exemption should not have been engaged without fully gathering and assessing the information in question.
23. UKBA complied with sections 17(7)(a) and 17(7)(b) as rights of appeal and complaint were stated in the response.
24. I conclude that UKBA incorrectly cited section 31(1)(e), and should have in fact cited section 12(1) in relation to Mr Simpson’s request. This has been corrected as part of this internal review.

Information Access Team

Home Office

04 October 2011

Annex A: Request for Internal Review from Mr Robert Simpson

Dear UK Border Agency,

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 'eGram summary information'.

My request has been denied in full. UKBA have said that my request would or would likely “prejudice the operation of immigration controls”. While it may be possible that a small part of my request might in some cases do that, it is a little beyond belief that all parts of my request do so for all requested OPIs.

UKBA has previously released entire OPIs, apparently without “prejudicing the operation of immigration controls”. See FOI request 17943 made by Mr Colin Yeo on 1 March 2011, which produced the OPI <http://tinyurl.com/4x6gpb1> (“Corrected version of eGram No: 2834/11”)

I requested only 6 specific items of information about each OPI. I have specified that UKBA does not need to provide the body (or “main text”) of the OPIs, though I am happy to have them. I also said that “Should some part of the Summary or Title be legally excludable under the FOI act, e.g. the name of a real person, I would request that only the excludable portion of the Summary or Title field be redacted and that the rest be provided as-is.”

Would releasing the title or summary of each OPI, by definition, “prejudice the operation of immigration controls”? Even when it is something banal like, for example, “Performance monitoring for UKBA employees working in British embassies”?

I understand the need to redact where there is a genuine “prejudice the operation of immigration controls”. I would not expect you to release me the names of UKBA employees, nor implementation details of sensitive operations they are conducting.

Possibly all the other OPIs are more sensitive. But then I wonder why did I not even get the information requested about eGram No: 2834/11?

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

Yours faithfully,

Robert Simpson

Annex B: Initial Response from UKBA to Mr Simpson



UK Border Agency
International Group London
Visa Customer Services
DPU, Lunar House
40 Wellesley Road
Croydon
CR9 2BY
Fax: 0870 336 9240
www.ukba.homeoffice.gov.uk

Robert Simpson
Email: request-79858-8e451712@whatdotheyknow.com

HO Reference: GV100/159877
FOI Reference: 19621

2 September 2011

Dear Mr Simpson,

REQUEST FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT 2000.

Thank you for your recent email correspondence of 9 August in which you have asked the following:

In response to your recent contact, I would like to rescope and clarify my request. This version of the request completely succeeds older versions.

My request is for Operational Instructions (OPIs) which originate from UKBA, and which are distributed outside the UK. These may be distributed in the form of eGrams, or through some other mechanism.

I would like to have the following information about each OPI:

- (1) FCO's eGram identifying reference (where available)**
- (2) UKBA's OPI identifying reference (e.g. an OPI number)**
- (3) Distribution list (including which overseas offices, and which staff within the office (e.g. all visa staff, all risk assessment staff or all staff))**
- (4) Dispatch Date**
- (5) Summary (this may also be known as the "executive summary" or "description" or "brief description" or something similar)**
- (6) Title (this may also be known as Subject or something similar)**

I am not requesting the "main text" of each eGram, although you can feel free to provide it should that make it easier to respond to this FOI request.

Should some part of the Summary or Title be legally excludable under the FOI act, e.g. the name of a real person, I would request that only the excludable portion of the Summary or Title field be redacted and that the rest be provided as-is.

If this set of eGrams is too large to provide in its entirety, I would like to request as many of those eGrams, working back in time from today that can be generously provided within my £600 limit.

I have attempted to make this request as easy to read and respond to as possible. If you should have any outstanding questions, please do not hesitate to contact me.

I can confirm that International Group holds the information relating to your request. However, we have decided not to release the information to you, under Section 31 (1) (e) of the Freedom of Information Act 2000.

Section 31 (1) (e) allows us to exempt information if its disclosure would, or would be likely to, prejudice the operation of immigration controls. If we were to disclose the information requested it may serve to compromise the effective functioning of the Immigration Rules which is fundamental to the UK Border Controls. The use of this exemption requires the UK Border Agency 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.

We have considered the public interest there may be in disclosing the information to you. There is a very real public interest regarding the ability of the UK Border Agency to properly manage its Border Controls. There is a public interest in disclosure to ensure that this is public confidence in Border Controls and how the UK Border Agency administers the Immigration Rules.

If we were to disclose this information it could substantially prejudice the operation of our immigration controls. This is because disclosure may enable potential immigration offenders to obtain detailed information on our risk assessment methodology and sensitive information on the responsibilities of an Entry Clearance Officer. It may also enable potential immigration offenders to circumvent the system.

There is also a public interest in disclosing the information to you as it will increase the transparency of the work of the UK Border Agency. There is also a public interest in ensuring public confidence in the United Kingdom's immigration controls. The UK Border Agency already publishes much of our operational instructions online.

Please review the following link

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/>

This section contains the policy, guidance and country information used by our staff. We publish these documents as part of our commitment to freedom of information.

A few documents are classified as 'restricted' because they contain sensitive information. In these circumstances we remove the sensitive information from the document or, on some occasions, we do not make the document available.

I have also considered the public interest there may be in maintaining the exemption to the duty to communicate. There is a public interest in ensuring the integrity of the United Kingdom's immigration controls. Disclosure would allow the public to assess the effectiveness of our risk assessment strategy and this might assist potential immigration offenders to circumvent the United Kingdom's immigration controls. This is clearly not in the public interest.

I have considered whether in all circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. I 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 UK Border Agency is able to maintain the integrity of the United Kingdom's immigration control

If you are dissatisfied with this response you may request an independent review of our handling of your request. Internal review requests should be submitted within two months of the UK Border Agency sending a substantive reply to your original request and should be addressed to:

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
E-mail: info.access@homeoffice.gsi.gov.uk

During the independent review, the department's handling of your information request will be reassessed by a member of staff that was not involved in providing you with the response.

Yours sincerely

Ms M Asomaning
Visa Customer Services

Annex C: Mr Simpson's initial request

Dear VSD - FOI Enquiries,

In response to your recent contact, I would like to rescope and clarify my request. This version of the request completely succeeds older versions.

My request is for Operational Instructions (OPIs) which originate from UKBA, and which are distributed outside the UK. These may be distributed in the form of eGrams, or through some other mechanism.

I would like to have the following information about each OPI:

- (1) FCO's eGram identifying reference (where available)
- (2) UKBA's OPI identifying reference (e.g. an OPI number)
- (3) Distribution list (including which overseas offices, and which staff within the office (e.g. all visa staff, all risk assessment staff or all staff))
- (4) Dispatch Date
- (5) Summary (this may also be known as the "executive summary" or "description" or "brief description" or something similar)
- (6) Title (this may also be known as Subject or something similar)

I am not requesting the "main text" of each eGram, although you can feel free to provide it should that make it easier to respond to this FOI request.

Should some part of the Summary or Title be legally excludable under the FOI act, e.g. the name of a real person, I would request that only the excludable portion of the Summary or Title field be redacted and that the rest be provided as-is.

If this set of eGrams is too large to provide in its entirety, I would like to request as many of those eGrams, working back in time from today, that can be generously provided within my £600 limit.

I have attempted to make this request as easy to read and respond to as possible. If you should have any outstanding questions, please do not hesitate to contact me.

Yours sincerely,

Robert Simpson