



Home Office

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Alice Welsh
request-613091-
931c1d3f@whatdotheyknow.com
20 March 2020

Dear Ms Welsh

Freedom of Information request (our ref. 56222): Internal Review

Thank you for your e-mail of 20 November 2019, in which you asked for an internal review of our response to your Freedom of Information (FoI) request. We apologise for the delay in providing you a response.

I have now completed the review. I have examined the response and I have considered whether the correct procedures were followed and assessed the reasons behind the response. I can confirm that I was not involved in the initial handling of your request.

Your request can be viewed at **Annex A** and response is at **Annex B**. The response refused your request under section 36(2)(c) of the FOI Act.

Your internal review request is at **Annex C**, but the crux of your complaint is that you disagreed with the response.

I have now considered your complaint and have consulted with the responding unit. My main finding is that the response provided to you was correct.

In your internal review, you argue that the arguments cited are in relation to section 22 and therefore do not apply. You stated –

“Your primary consideration in favour of withholding the information was that it would be a “premature release” of the data that would undermine pre-publication procedures and the Home Office’s ability to use its staff resources effectively in a planned way.

The substance of the reasoning is analogous to reliance on an exemption under s22 FOIA (future publication) as it was stated that the information requested would be released shortly as part of the “overall figures” in this month’s quarterly EUSS statistics. However, the administrative review statistics were in no way a part of the quarterly statistics. As such, your reliance on the upcoming publication of the quarterly EUSS statistics was a materially irrelevant consideration.”

This internal review confirms that the Department intends to publish some of the information it holds and that it took this decision before your request was received. However, the information in the way you request it, is not going to be published. It is a subset of the data that is to be published. As the information intended for publication will not contain the information specifically requested, section 22(1) (information intended for future publication) of the Act cannot be engaged.

Although this information does not fall under section 22(1), it still cannot be released until the full publication of the overarching statistics. This is because it is a subset of data. Subsets of data are normally withheld until the date of publication under the exemption contained within section 36 of the Act. The reason for this is that through what is known as mosaic requests (a series of requests for subsets of data), individuals or organisations could build up a picture of the larger information being published through requests for subsets of data.

Section 36 states that:

36 Prejudice to effective conduct of public affairs

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(4) 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”.

Section 36(2)(c) requires a public interest test, which was included in the response letter. This review finds that the balance of the public interest still lies in maintaining the exemption and withholding the information.

In normal circumstances the application of section 36 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 of the Crown. 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”

Therefore, as this case relates to statistical information, section 36(2)(c) was applied without the need of the decision being taken by a ‘qualified person’.

Please be aware the information covered by section 36(2)(c) is only exempt from disclosure until the information is published. Once it is published, a requestor can submit a revised request for the data and the Home Office will consider afresh.

In this case you made your request on 31 October 2019 and our response was issued on 12 November 2019. The quarterly statistics had not at that time been published and so section 36(2)(c) was correctly engaged. However, the quarterly statistics were published on 28 November 2019. Had you made your request after this date, Section 36(2)(c) would likely have not been engaged. Should you now wish to gain access to this information the onus is on you to make a new request to the Department. Whilst it is likely it will no longer be covered by section 36(2)(c), other exemptions may apply.

Conclusion

Section 36(2)(c) was correctly engaged.

Yours sincerely

S John
Information Rights Team

Annex A – Original request (55969)

Dear Home Office,

I am interested in the EU Settlement Scheme and administrative reviews of the decisions made under the scheme. In a previous request (FOI 54536), responded to on 31st August, I received statistics on Administrative reviews up until the end of May 2019 some of which was provided in an evidence session with the EU Justice Sub-Committee on 16th July (<https://parliamentlive.tv/event/index/3973ae3c-4a31-4c99-aa97-c0594e769456?in=13:06:25&out=13:07:57>).

I was hoping to get an update on these statistics. Please could you, within the limits of the FOIA, provide answers to the following questions, as far as possible:

1. What is the current running total of EUSS administrative reviews requests made?
2. How many EUSS administrative reviews have been upheld?
3. How many EUSS administrative review decisions were overturned from pre-settled to settled status?
4. What is the running total of EUSS administrative review fees that have been refunded?

If you cannot answer one question, please answer those questions that you are able to.

Yours faithfully,

Annex B – Response seeking clarification (55969)

Dear Ms Welsh,

Thank you for your enquiry of 17 October. This falls to be dealt with under the Freedom of Information Act 2000. For reference, your request is copied below.

1. What is the current running total of EUSS administrative reviews requests made?
2. How many administrative review requests have been rejected?
3. How many EUSS administrative reviews have been upheld?
4. How many EUSS administrative review decisions were overturned from pre-settled to settled status?
5. What is the running total of EUSS administrative review refunds that have been processed?

To help us to deal with your request properly, I would be grateful if you could clarify it. Specifically, do you want the same information as provided in FOIs 54536 and 55254 but covering a later time period? Please note that we are only able to disclose information in-line with the latest published statistics.

Secondly, regarding your fifth question, do you want the number of refunds that have been completed, or the financial total of refunds made? (e.g. 'X number of review refunds have been completed' OR, '£X has been refunded for administrative reviews in total').

Once you provide this information, we will aim to send you a full response within twenty working days. Please note that even if you clarify your response, we may not hold the information requested, and exemptions of the FOIA may apply.

Yours sincerely

Annex C – Clarified Request (56222)

In response to your questions I have clarified my request:

1. Do you want the same information as provided in FOIs 54536 and 55254 but covering a later time period? Please note that we are only able to disclose information in-line with the latest published statistics.

Yes, I am requesting the number of administrative reviews for EUSS decisions which have been:

- a. received
- b. rejected as invalid
- c. overturned
- d. upheld

This is the same information provided in the previous FOIs mentioned. As I understand it, this is taken from a live operational database and I would like an update on these numbers.

2. Secondly, regarding your fifth question, do you want the number of refunds that have been completed, or the financial total of refunds made? (e.g. 'X number of review refunds have been completed' OR, '£X has been refunded for administrative reviews in total')

I would like the number of refunds that have been completed for administrative reviews of decisions made under the EU Settlement Scheme.

I look forward to your reply.

Annex D – Response to 56222

Dear Ms Welsh,

Thank you for your enquiry of 31 October in which you requested information on the EU Settlement Scheme. Your request has been handled as a request for information under the Freedom of Information Act 2000.

Information Requested

Initial Request

- 1. What is the current running total of EUSS administrative reviews requests made?*
- 2. How many administrative review requests have been rejected?*
- 3. How many EUSS administrative reviews have been upheld?*
- 4. How many EUSS administrative review decisions were overturned from pre-settled to settled status?*
- 5. What is the running total of EUSS administrative review refunds that have been processed?*

Further Clarification

- 1. Do you want the same information as provided in FOIs 54536 and 55254 but covering a later time period? Please note that we are only able to disclose information in-line with the latest published statistics.*

Yes, I am requesting the number of administrative reviews for EUSS decisions which have been:

- a. received*
- b. rejected as invalid*
- c. overturned*
- d. upheld*

This is the same information provided in the previous FOIs mentioned. As I understand it, this is taken from a live operational database and I would like an update on these numbers.

- 2. Secondly, regarding your fifth question, do you want the number of refunds that have been completed, or the financial total of refunds made? (e.g. 'X number of review refunds have been completed' OR, '£X has been refunded for administrative reviews in total') I would like the number of refunds that have been completed for administrative reviews of decisions made under the EU Settlement Scheme.*

Response

We do hold the information you have requested. However, as it will not be published into the public domain until later this month, we have decided that the information is exempt from disclosure under section 36(2)(c) of the Freedom of Information Act. This provides that information can be withheld where disclosure would prejudice the effective conduct of public affairs and the public interest falls in favour of applying the exemption.

Please find our considerations regarding disclosure outlined in Annex 2 below.

Please note that information released is done so in-line with published statistics. The quarterly release of statistics will be released later this month, at which point the information you have requested will be available to request.

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

foirequests@homeoffice.gsi.gov.uk, quoting reference 56222. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request will be reassessed by staff 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

Public interest test

Some of the exemptions in the FOI Act, referred to as 'qualified exemptions', are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The 'public interest' is not the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community, as a whole, if the information is released or not. The 'right to know' must be balanced against the need to enable effective government, and to serve the best interests of the public.

Please note that the FOI Act is 'applicant blind'. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

Considerations in favour of disclosing the information

There is a general public interest in statistics relating to migration. Disclosure of the information requested would increase accountability and transparency and enhance the public's understanding of current trends in the EU Settlement Scheme. All of these factors are in the public interest and there is some weight to be given to the considerations in favour of disclosing the information.

Considerations in favour of withholding the information

The Department publishes migration statistics quarterly and intends to publish migration statistics later this month. Although the exact breakdown of the information requested will not be published, it will form part of the overall figures. Premature release of the subset of data requested could form part of a series of requests which together could build up a picture of the overall data due to be published. Although it is accepted that you may not necessarily be interested in making subsequent requests, information released to one person under the FOI Act is, in effect, released to the public at large. This would provide an opportunity for others to submit additional requests ahead of the planned publication date in order to obtain the information prematurely.

Premature disclosure of statistics without adhering to established pre-publication procedures (which include internal consultation about the final statistics being published) would undermine the Department's ability to use its staff resources effectively in a planned way, so that reasonable publication timetables are not affected.

We conclude that the overall balance of the public interest lies in favour of withholding the information to ensure that the Home Office is able to publish migration statistics in a managed and coherent way.

Annex E - Internal Review

Dear Home Office,

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

I write to request an internal review of your refusal to disclose data about administrative reviews of decisions made under the EU Settlement Scheme (EUSS). I submitted my initial request (FOI 55969) and a clarification (case ref 56222) on 31 October 2019 and received a refusal on 12 November 2019.

Your refusal relied upon section 36(2)(c) FOIA on the basis that disclosing the information would prejudice the effective conduct of public affairs and the public interest falls in favour of applying the exemption.

Your primary consideration in favour of withholding the information was that it would be a “premature release” of the data that would undermine pre-publication procedures and the Home Office’s ability to use its staff resources effectively in a planned way.

The substance of the reasoning is analogous to reliance on an exemption under s22 FOIA (future publication) as it was stated that the information requested would be released shortly as part of the “overall figures” in this month’s quarterly EUSS statistics. However, the administrative review statistics were in no way a part of the quarterly statistics. As such, your reliance on the upcoming publication of the quarterly EUSS statistics was a materially irrelevant consideration.

You also failed to take into account a materially relevant consideration. The EUSS, unlike other immigration schemes, is open for a limited window. If the UK leaves the EU without a deal, applications to the EUSS close on 31 December 2020. The EUSS has been fully open to the public for (potentially) more than a third of its operating time. This consideration weighs strongly in favour of not delaying publication of statistics that are important to understanding how the EUSS operates.

Furthermore, administrative review statistics relating to the EUSS have previously been disclosed when requested (FOI Ref: 54536 and FOI Ref: 55254). There has been no explanation for the Home Office’s change of approach.

For the reasons stated above, it is clearly in the public interest to disclose the requested information without further delay.

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/euss_administrative_review_stati_2

Yours faithfully,

Annex F – Complaints procedure

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