



Home Office

Shared Services
Directorate
2 Marsham Street
London SW1P 4DF

020 7035 4848
(switchboard)

www.homeoffice.gov.uk

xxx Deacon

[request-135547-
4f1ea39f@whatdotheyknow.com](mailto:request-135547-4f1ea39f@whatdotheyknow.com)

27 February 2013

Dear xxx Deacon

Freedom of Information request (our ref. 24872): internal review

Further to my letter of 13 February 2013, regarding your request for an internal review of our response to your Freedom of Information (Fol) request I have now completed the review, specifically looking at the part of your request which has not been answered. You asked, in relation to Armed Forces residence applications:

“Can I request any correspondence, minutes, marginal notes etc on what is being considered by UKBA the Home Office and the MOD?”

I can confirm that that some information relevant to your request is held by the Home Office. I have examined the information within scope of your request and consider that it relates to the formulation and development of policy, and that the exemption at section 35(1)(a) is engaged.

Section 35

Information is exempt under section 35(1)(a) if it ‘relates to’:

the formulation or development of government policy

Section 35 is concerned to ensure that there remains a safe space within which the formulation and development of government policy and government decision-making can proceed, balanced with proper public participation in policy debates. In this case the policy relates to the Armed Forces and applications for settlement or nationality.

The exemption at s. 35(1)(a) can be broadly applied to include all information relating to the formulation or development of government policy, this includes the minutes of a particular meeting or part of one, a memorandum or a note of advice. If the meeting or discussion of a particular topic within it, was, as a whole, concerned with s.35(1)(a) activities, then everything that was said and done is covered.

This will also include such documents as submissions to ministers, correspondence with other departments and public bodies in connection with policy development, and internal departmental correspondence. Drafts of such documents are also covered, as well as related documents such as e-mails discussing points arising on drafts.

The information held by the Home Office which is the subject of your request all falls to be considered within the scope of the exemption at s.35(1)(a).

Public interest Test

Section 35 is a qualified exemption and requires us to carry out a public interest test. This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information.

In favour of disclosure we consider that greater transparency makes government more accountable, as knowledge of the way government works increases, the public have increased trust in the decision making process and there is an opportunity for a public contribution to the policy making process. This could result in a more effective policy. There is also a public interest in being able to assess the quality of advice being given to ministers and subsequent decision making. In this case there is clearly a public interest in knowing about the changes to be made to existing policy, particularly for those that will be affected by those changes and by the implementation of the policy.

Against disclosure, ministers and officials must have the ability to offer advice and opinion freely and frankly and to explore all options when discussing the formulation and development of a policy. Good government depends on good decision-making and this must be based on the best advice available with full consideration of all the options, without fear of premature disclosure. You specifically asked for disclosure of interdepartmental consideration, including any correspondence, release of this information into the public domain may undermine the collective responsibility of the government. In this case we must consider the necessary exchange of ideas and views between government departments with an interest in the policy, and if the public interests outlined above cannot be protected, there is a risk that decision-making will become poorer and will be recorded inadequately. Officials who are asked to give their views and to comment on drafts could come under pressure not to challenge ideas in the formulation of policy, thus leading to poorer decision making if this information was to be disclosed.

In conclusion I find that the balance of public interest in this case falls in favour of withholding the information.

Information and Guidance

I realise that this will be a disappointing response and I understand that you wish to be fully informed. The papers that are covered by the section 35 exemption were preparatory to changes that were made to the Immigration Rules on 13 December 2012. I attach a link to the relevant documents. The first is to the General Grounds for Refusal (criminality) guidance. This sets out UKBA's general approach to criminality in all cases.

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/general-grounds-refusing/>

The second link is to the guidance on considering applications from ex-Armed Forces personnel where there are military service or civil court convictions.

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter15/section2b/section2b.pdf?view=Binary>

If you have any questions on the published guidance, the Criminality Policy Team in the Home Office would be happy to answer those. Please contact Martin Stares, by sending an e-mail to FOIRequests@homeoffice.gsi.gov.uk marked for his attention.

I apologise once again that this part of your request was overlooked when your original FOI request was received, and I am sorry that the response you did receive was in breach of section 10(1) of the Act as it was sent late.

If you remain dissatisfied following my response 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

J Millar
Information Access Team

Switchboard 020 7035 4848
E-mail info.access@homeoffice.gsi.gov.uk