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Colin Yeo  
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Dear Mr Yeo

**Freedom of Information request (our ref: 32533): internal review**

Thank you for your e-mail of 15 September 2014, in which you asked for an internal review of our response to your Freedom of Information (Fol) request about Home Office training on Human Rights relating to the immigration law changes that took effect on 28 July 2014.

I have now completed the review. I have examined all the relevant papers, and have consulted the policy unit which provided the original response. I have considered whether the correct procedures were followed. I confirm that I was not involved in the initial handling of your request.

My findings are set out in the attached report. My conclusion is that the response failed to confirm that the specific information requested was held and provide an explanation for why it was not considered suitable for disclosure. For further explanation see paragraphs 9 – 20.

Yours sincerely

**D Pottinger**  
**Information Access Team**

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Colin Yeo (reference 32533)

**Responding Unit: Immigration and International Policy Group (IIPG)**  
**Chronology**

Original Fol request:	6 August 2014
IIPG response:	4 September 2014
Request for internal review:	15 September 2014

**Subject of request**

1. The request asked for training materials relating to the immigration law changes that took effect on 28 July 2014. For the full text of the request see **Annex A**.

**The response by IMS**

2. The response confirmed that the information was held, and provided links to published information. For the full text of the response see **Annex B**.

**The request for an internal review**

3. The internal review request stated that Mr Yeo assumed that the statement that Home Office training is based on the published documents means that further training materials are held, and requested that they should be released. For the full text of the internal review request see **Annex C**.

**Procedural issues**

4. The Home Office received Mr Yeo's request via email on 6 August 2014.
5. On 4 September 2014 the Home Office provided Mr Yeo with a substantive response, which represents 20 working days after the initial request. Therefore, the Home Office complied with section 10(1) by providing a response within the statutory deadline of 20 working days.
6. The response confirmed that information was held relating to the request as required under section 1(1)(a), cited section 21 – information available by other means, and provided links.
7. Mr Yeo 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.
8. The response also informed Mr Yeo of his right of complaint to the Information Commissioner, as set out in section 17(7)(b) of the Act.

## Consideration of the response

9. The response informed Mr Yeo that the requested information was available to him by other means – section 21 – and provided him with links to published documents about the changes in legislation.
10. During the course of this internal review, IIPG confirmed that it held copies of training material relating to the immigration law changes that took effect on 28 July 2014. These were based on, but not identical to, the published information available via the links supplied in the initial response.
11. Although it was helpful to provide a link to the published material, it does not fully answer Mr Yeo's question. IIPG should have stated that the requested information was held, and provided reasons under the FOI Act for withholding it. Mr Yeo stated that training materials had been disclosed in responses to previous FOI requests.
12. Each case is considered on its own merits, and the fact that similar information has been released in the past does not mean that the Home Office is obliged to disclose the requested information in this case. IIPG stated that, although details of the legislation itself had been published, the training material itself should not be released, as disclosure would prejudice the operation of immigration controls – section 31(1)(e).

## Section 31: Law enforcement.

- (1) *Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*
  - (a) *the prevention or detection of crime,*
  - (b) *the apprehension or prosecution of offenders,*
  - (c) *the administration of justice,*
  - (d) *the assessment or collection of any tax or duty or of any imposition of a similar nature,*
  - (e) *the operation of the immigration controls,*

## Public interest test

14. 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, or the considerations for and against the requirement to say whether the information requested is held or not. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.
15. 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.
16. 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**

17. There is a public interest in openness and transparency, so that the public are able to ascertain that adequate guidance is being provided to those making decisions about who is able to remain in the UK. Publication of the changes to the legislation will have contributed to public understanding of how these decisions are made.

### **Considerations in favour withholding the information**

18. The withheld training documents contain lines to take, which could assist a foreign criminal's representatives in forming their arguments for appeal. If their appeals were successful, then we could be prevented from deporting foreign criminals in cases where it would be appropriate to do so.
19. Appellants have full opportunity to hear and counter our arguments about their specific cases at the appeal hearing, so it would not be unfair to them to withhold the information in question.
20. We conclude that the balance of the public interest lies in withholding the information because it would not be in the public interest for foreign criminals to avoid deportation when they do not have the right to do so.

### **Conclusion**

21. The response was sent within 20 working days; consequently the Home Office complied with section 10(1) of the FOI Act.
22. Section 1(1)(a) was only partially complied with, as the response did not clearly state that the precise information requested was held.
23. Section 21 did not apply as the published information was not identical to that requested.
24. Section 31(1)(e) should have been cited, and an explanation of the exemption provided.
25. The response complied with the requirements in section 17(7)(a) and 17(7)(b) as it provided details of the complaints procedure.

**Information Access Team  
Home Office**

## **Annex A – full text of request**

There were some very major changes to immigration law that took effect on 28 July 2014 through a combination of commencement of certain parts of the Immigration Act 2014 and also Statement of Changes to the Immigration Rules HC 532. Most of the changes relate to human rights immigration rules and to deportation appeals.

I understand that training was delivered to Home Office Presenting Officers and others about these changes.

I would be grateful for release of any or all training materials relating to the immigration law changes that took effect on 28 July 2014, both the changes to human rights rules and the changes to deportation appeals.

## **Annex B – full text of the response letter**

### **FOI Request 32533**

Thank you for your e-mail of 6 August 2014 in which you ask for release of any or all training materials relating to the immigration law changes that took effect on 28 July 2014, both the changes to human rights rules and the changes to deportation appeals provided to presenting officers and others.

Your request has been handled as a request for information under the Freedom of Information Act 2000.

I can confirm that the Home Office holds the information that you requested. However, after careful consideration we have decided that the information is exempt from disclosure under section 21 of the Freedom of Information Act.

The information that we hold is already accessible by other means. The Home Office has published guidance to caseworkers on considering Article 8 and the application of non-suspensive appeals in deportation cases on the gov.uk website. Training to presenting officers and others was based on our published guidance.

I have included links to the relevant guidance in this letter.

Criminality and deportation:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/337253/Article\\_8\\_ECHR\\_Guidance\\_-\\_v5\\_0\\_-\\_Version\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337253/Article_8_ECHR_Guidance_-_v5_0_-_Version_2_.pdf)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336866/Section\\_94B.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336866/Section_94B.pdf)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336878/EE\\_A\\_Amendment\\_No\\_2\\_Regulations\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336878/EE_A_Amendment_No_2_Regulations_2014.pdf)

Non-criminality cases:

<https://www.gov.uk/government/publications/chapter-8-appendix-fm-family-members>

If you have any difficulties in accessing this information do not hesitate to contact me again.

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 32533. 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](mailto: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.

## **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 Home Office's handling of my FOI request 'Home Office training materials on new human rights immigration rules and deportation provisions'.

In the response you stated:

"The information that we hold is already accessible by other means. The Home Office has published guidance to caseworkers on considering Article 8 and the application of non-suspensive appeals in deportation cases on the gov.uk website. Training to presenting officers and others was based on our published guidance."

By using the words "based on" the response appears to accept on the face of it that there are additional training materials that were used over and above and different to the published materials. The training materials are therefore not exempt.

I request a review on the basis that there are apparently such training materials and that they are different to the published materials. There is a legitimate public interest in comparing the two sets of documents, and I am also aware that in other FOI requests training materials have been released.

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

<https://www.whatdotheyknow.com/request/h...>

## **Annex D – 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