



Home Office

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Mr Colin Yeo
[via whatdotheyknow.com]

20 April 2015

Dear Mr Yeo,

ICO reference FS50565161
Home Office reference 32533

The Information Commissioner's Office (ICO) has asked me to write to you following your complaint to their office. This is regarding your Freedom of Information request for training materials relating to the immigration law changes that took effect on 28 July 2014.

We are now able to provide you with some of the information you requested. This information is attached at **Annex A** of this response.

However, after careful consideration, we have decided that some of the information remains exempt from disclosure under sections 36(2)(c) and section 42(1) of the Freedom of Information Act. These provide that information can be withheld if disclosure would be prejudicial to the effective conduct of public affairs and where the information is subject to legal professional privilege respectively.

Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion, are set out in the attached **Annex B**.

Section 31(1)(e) which relates to the operation of immigration controls is also engaged. Our arguments for and against disclosure are as explained to you in our response of 11 December 2014, following your request for an internal review.

Yours sincerely

S Goddard
Information Access Team

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Freedom of Information request from Mr Yeo (reference 32533)

Information requested

Any or all of 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.

Response

Some of the information is exempt from disclosure under sections 36(2)(c) and 42(1) of the FOI Act. Sections 36(2)(c) and 42(1) provide that information is exempt from disclosure if it would prejudice the effective conduct of public affairs and is subject to legal professional privilege.

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 maintaining the exemption. 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. Transparency and the 'right to know' must be balanced against the need to enable effective government and to serve the best interests of the public.

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.

Application of the exemption under section 36(2)(c) of the Act (prejudice to effective conduct of public affairs)

Section 36 – (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.

Considerations in favour of disclosing the information

We recognise that there is a public interest in openness and transparency in all aspects of government and that there is a public interest in knowing that officials and presenting officers are trained properly, in accordance with legislation and published policy; and that they have the guidance required to represent the Home Office at appeal hearings.

Considerations in favour of maintaining the exemption

There is a strong public interest in allowing the Home Office to design and develop effective litigation strategy and provide effective training to its staff on how certain policy positions must be represented in court. If the content of future training material was disclosed, this would seriously compromise the Home Office's ability to present policies effectively in the future and could mean that it is more likely to lose appeals which it would otherwise successfully defend. It would not be in the public interest to damage the department's ability to conduct litigation strategy in a way that best defends the Government's policies. In terms of disclosure, there is no public interest in doing so that outweighs the potential detrimental effect.

Application of the exemption under section 42(1) of the Act (legal professional privilege)

Section 42 – (1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information

Considerations in favour of disclosing the information

It is recognised that there is a public interest in terms of transparency, as it would reassure the public that the Home Office is acting within the law and working to deport foreign national criminals (which is, in itself, in the public interest).

Considerations in favour of maintaining the exemption

The POs and SPOs are the Home Office's representatives in the First-tier and Upper Tribunals; it is important that parties are able to communicate confidentially with their representatives. Appellants and their legal representatives do not have to disclose their litigation strategy to any other person, so for the Home Office to be required to do so would be unfair and put the Home Office at a significant disadvantage. This would hamper the Home Office's ability to defend deportation appeals and could ultimately prevent the Home Office from deporting foreign criminals. This will have potentially serious ramifications on the Home Office's ability to protect the public from crime, including by using deportation as a deterrent to other would-be foreign criminals.