



Home Office

Performance and Risk 020 7035 4848
2 Marsham Street (switchboard)
London SW1P 4DF www.gov.uk

Becca Martin
request-354759-
cde54f18@whatdotheyknow.com

13 March 2017

Dear Ms Martin

Freedom of Information request (our ref. 40890): internal review

Thank you for your e-mail of 12 December 2016, in which you asked for an internal review of our response to your Freedom of Information (FoI) request about each arrest or detention that occurred on East Street, London over a 3 year period.

I apologise for the delay.

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

My findings are set out in the attached report.

Yours sincerely

Martin Riddle
Information Rights Team

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

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Becca Martin (reference 40890)

Responding Unit: Immigration Enforcement

Chronology

Original Fol request:	25 August 2016
Acknowledgement:	25 August 2016
Public Interest test extension issued:	21 September 2016
Immigration Enforcement response:	9 December 2016
Request for internal review:	12 December 2016

Subject of request

1. On 25 August 2016, Ms Martin submitted a request asking the Home Office for information about each arrest or detention that occurred on East Street, London over a 3 year period. The request wanted:
 - 1a. The date of each visit to a premises,
 - 1b. The time of each visit to a premises,
 - 2a. The powers used for each visit,
 - 2b. Copies of the proof of right of entry for each instance,
 3. The number of people 'intelligence' was held on for each visit,
 - 4a. The number of individuals detained for each visit
 - 4b. The reason for detention,
 - 5a. How long each person was detained for,
 - 5b. What action was taken following detention.

The response by Immigration Enforcement

2. Ms Martin was informed that the Home Office held the requested information and was provided with information in answer to parts 1a, 4 and 5 of the request. Information in relation to parts 2 and 3 was withheld under section 31(1)(e) (law enforcement) of the Freedom of Information Act.

Request for an internal review

3. Ms Martin asked for an internal review, arguing that section 31(1)(e) was the wrong exemption to use for those parts of the request where information was withheld. She made the following points:
 - *It is unclear how releasing the specific power of entry for historical immigration enforcement visits could prejudice the operation of immigration controls.*
 - *It is unclear how releasing proof of entry in historical visits could prejudice the legal operation of immigration controls.*

- *It is unclear how releasing information of how many people the Home Office had intelligence on during historical visits could prejudice the legal operation of immigration controls.*

4. Ms Martin also argued that the data provided to her for question 4a released the number of people detained per month, not per visit as requested. She asked for this to be corrected.

Procedural issues

5. The request was received on 25 August 2016 and a response was issued on 9 December 2016. This represents a period of 79 working days between receipt of the request and the response being issued.
6. The deadline for the response was legally extended under Public interest test extension, extending the deadline until 18 October 2016. However the Home Office did not provide its response within this revised deadline, as specified in section 10 of the Act.
7. Ms Martin was informed in writing of the right to request an independent internal review of the handling of the request, as required by section 17(7)(a) of the Act. The response also informed Ms Martin of his right of complaint to the Information Commissioner, as set out in 17(7)(b) of the Act.

Consideration of the response

8. The following is an assessment of each question and the answer the Home Office provided.

Question 1

9. The response provided the information in answer to question 1a) (date of visit) but did not do so for question 1b) (time of visit). If the timing of the visits were provided, it could provide those seeking to circumvent immigration controls with information that could enable them to deduce a pattern in the visits to premises. Offenders could use that information to adjust their behaviour patterns and increase their chances of circumventing visits. This does not apply to the same extent to information about dates. Section 31(1)(e) was cited to withhold this information and a public interest test was conducted in the original response. However, section 31(1)(b) (the apprehension and prosecution of offenders) should have also been cited. Section 31(1)(b) requires a public interest test and so this is included here.

Considerations in favour of disclosing the information – Section 31(1)(b)

There is a public interest in the disclosure of this information to the extent that it would allow the public to assess whether the Home Office is adequately carrying out its functions in regard to the apprehension and prosecution of offenders.

There is also a public interest in disclosure to the extent that it could reassure the public that there are effective systems in place to ensure that those people who have committed offences would be apprehended and prosecuted where appropriate.

Considerations in favour of maintaining the exemption – Section 31(1)(b)

Disclosure could assist potential offenders to obtain detailed and sensitive operational knowledge and could enable potential offenders to circumvent current systems and the procedures in place to counter, detect or apprehend offenders.

There is clearly a strong public interest in doing everything we can to apprehend and prosecute offenders. Disclosing the requested information would not be in the public interest as it could compromise any subsequent action to be taken by the Home Office and could alert others to the intended course of action and Home Office plans to take against them.

Question 2

10. The Home Office originally withheld the warrants and proof of right of entry under section 31(1)(e). The warrants contain detailed information about the officer that obtained the warrant, the individual, the address visited, when it was executed, what was found, who was arrested, which officers were there when the warrant was executed. This information includes personal information and information needed to progress the case. Section 31(1)(e) does apply to much of this information. Section 40(2) (personal information) also applies. Section 40(2) is an absolute exemption and therefore no public interest test is required. In addition having reviewed the rest of the request and the points I have made below concerning question 5, the powers of entry in this case should have also been withheld under sections 31(1)(b). The required public interest tests are included above and in the original response letter.

Question 3

11. The information on intelligence was withheld under section 31(1)(e). However, this was applied incorrectly. Section 31(3) (neither confirm nor deny) should have been cited instead. To confirm or deny whether any intelligence was held on individuals would be prejudicial to the Home Office and law enforcement agencies' ability to prevent and detect crime. Revealing any capability by individual departments presents a real risk of informing any potential targets the extent of coverage involved against them which in turn could prove detrimental. Thus it would not be in the public interest to confirm whether or not the Home Office does or does not hold the requested information. This should not be taken as confirmation that the information you have requested exists or not. Section 31(3) requires the consideration of the public interest test.

Public interest considerations in favour of confirming or denying whether the requested information is held– section 31(3)

The Home Office recognises that there is a general public interest in transparency and openness in government. Such openness could increase public understanding and inform public debate. Confirming or denying whether the requested information is held could provide the public with reassurance as to how law enforcement resources are deployed.

Public interest considerations in favour of maintaining the exclusion to neither confirm nor deny whether the requested information– section 31(3)

Confirming whether the information is or is not held could information about techniques used by law enforcement agencies, which could confirm any public speculation about the nature of operational intelligence or its purpose. It is clearly not in the public interest to confirm or deny whether such law enforcement activities are taking place or to provide information about the nature of any such activities and intelligence, which could potentially benefit people who are intending to carry out criminal activities. Confirming or denying whether we hold the information could affect the behaviour of those subject to any law enforcement investigations and possibly harm the efficacy of any such investigations.

Balance of the public interest – sections 31(3)

Although it is acknowledged that some of the considerations that favour disclosure carry particular weight, having balanced the arguments for and against disclosure, we have

concluded that the public interest weighs in neither confirming nor denying we hold the information requested at part 3.

Question 4

12. Ms Martin stated that the Home Office had provided her with information for the number of persons detained per month, not per visit as she had requested. This is correct and the reason should have been explained to Ms Martin. The reason is twofold. First, the number of people detained on each visit is quite low and secondly the fact that the information relates to a specific street in Southwark. Although the unit was correct in not providing it, the unit did not correctly cite an exemption to withhold this information. The response should have stated that the information was withheld under section 40(2) (personal information). This is because the low numbers of individuals involved and the specific location could lead to the identification of individuals. The Home Office has obligations under the Data Protection Act and in law generally to protect this information and the general policy of the Home Office is not to disclose, to a third party, personal information about another person. Section 40(2) is an absolute exemption that does not require the consideration of the public interest test.
13. Ms Martin raised no questions or concerns regarding the Home Office's response to question 5.

Conclusion

14. There was a procedural breach of section 10(1). The response was issued outside 40 working days (PIT extension applied).
15. The information released in answer question 1(a) was correctly provided
16. The information withheld under question 1(b) was correctly withheld under section 31(1)(e), however, Section 31(1)(b) should also have been engaged.
17. The information withheld under question 2 was correctly withheld under section 31(1)(e), however, Section 31(1)(b) and 40(2) should also have been engaged.
18. The information withheld under question 3, was incorrectly withheld under section 31(1)(e). The correct exemption to cite was the neither confirm nor deny exemption under section 31(3).
19. The information released under question 4, was not what Ms Martin had requested. Whilst there were convincing reasons for this, these were not explained. The information should have been withheld in full under section 40(2).
20. I am satisfied there was no procedural breach of section 17(7)(a) or 17(7)(b).

Information Rights Team
Home Office
13/2/2017

Annex A – Original Request

For each enforcement visit for the purposes of arrest or detention that has occurred on East Street in Southwark, London, over the last 3 years I would like:

- 1 - I would like the date and time of each visit to a premises?
- 2 - The specific power of entry used for each visit? (eg. warrant, AD letter from senior management, consent). (2b) If time constraints allow I would also like redacted copies of the proof of right of entry for each instance as well.
- 3 - How many people did you have 'intelligence' on (eg. a name, description) for each visit?
- 4 - How many people were detained on each visit? (4b) And, if possible, for what reason?
- 5- If possible, how long was each person detained for and what was the action following detention? (eg. deportation, release etc.)

This request comprises many parts, if a part falls under an exemption I would still like the other parts answered.

Annex B – Response letter

Dear Ms Martin

Re: Freedom of Information – 40890

Thank you for your e-mail of 25 August, in which you ask for information regarding Immigration Enforcement visits on East Street, Southwark. Your query has been handled as a request under the Freedom of Information Act 2000.

You have asked us to provide the following information:

(1a) - I would like the date and (1b) time of each visit to a premises?

(2a) - The specific power of entry used for each visit? (e.g. warrant, AD letter from senior management, consent). (2b) if time constraints allow I would also like redacted copies of the proof of right of entry for each instance as well.

(3) - How many people did you have 'intelligence' on (e.g. a name, description) for each visit?

(4a) - How many people were detained on each visit? (4b) and, if possible, for what reason?

(5a) - If possible, how long was each person detained for and (5b) what was the action following detention? (eg. deportation, release etc.)

I am able to disclose some of the information that you have requested. A response to your request is at Annex A, which is attached.

With regards to the questions 1b, 2a, 2b and 3, I can confirm that the Home Office holds the information that you have requested. However, after careful consideration we have decided that the information is exempt from disclosure under section 31(1) e of the Freedom of Information Act.

Public interest test in relation to section 31(1)(e)

Law enforcement - which would be likely to, prejudice (e) the operation of the immigration controls.

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.

Considerations in favour of disclosing the information

There is a general public interest in openness and transparency in government, which will serve to increase public trust and promote public confidence in the operation of our immigration controls and in the way we carry out our work, in particular the removal of immigration offenders.

Considerations in favour maintaining the exemption

Against this there is a very strong public interest in safeguarding national security. It is important that this sensitive information is protected, as disclosure of information about operational working practices could damage national security and potentially undermine existing border controls and agreements with other countries, reducing their willingness to co-operate with the UK. Any disclosure that could prejudice national security would be contrary to the public interest.

Having considered the arguments above, I have concluded that it is in the best interests of the public to maintain the exemption in order to protect the Home Office's ability to respond to intelligence received regarding those living and working in the UK illegally strategically and that disclosure of this information could prejudice our ability to deploy teams strategically in future operations in the area.

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 40890. 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 3rd Floor, Peel Building
2 Marsham Street
London SW1P 4DF
E-mail: 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

(1a) - I would like the date and (1b) time of each visit to a premises?

Date of Visit
29/08/2013
30/08/2013
07/11/2013
17/11/2013
09/01/2014
10/03/2014
25/04/2014
26/04/2014
26/04/2014
14/06/2015
19/06/2015
21/06/2015

(2a) - The specific power of entry used for each visit? (e.g. warrant, AD letter from senior management, consent). (2b) if time constraints allow I would also like redacted copies of the proof of right of entry for each instance as well.

Information not released

(3) - How many people did you have 'intelligence' on (e.g. a name, description) for each visit?

Information not released.

(4) - How many people were detained on each visit?

	2013 11	2014 01	2014 04	2015 06	Grand Total
Number of persons detained	4	2	4	3	13

(4b) - and, if possible, for what reason? & (5a)- If possible, how long was each person detained for and (5b) what was the action following detention? (eg. deportation, release etc.)

Reason for Detention - Offence Committed	Length of Detention (days)	Action following Detention:-		Grand Total
		Granted temporary release	Removed	
Illegal entrant (Clandestine)	12	1		1
Port Refusal Leave to Enter	24		1	1
Overstayer	1	1		1
	12		2	2

	17		1	1
	18	1		1
	33		1	1
	48		1	1
	57	1		1
	79		1	1
	88		1	1
	135		1	1
Grand Total		4	9	13

Annex C – Request for an internal review

Dear Home Office,

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 'Immigration Enforcement visits on East St, Southwark'.

In answering my request you refused to answer 4 parts of the request (1b, 2a, 2b, 3) all for the same reason of Section 31(1)e - the information if released would be likely to prejudice the operation of immigration controls. I think this is a wrong application of the exemption for all of the four questions, however I only want the refusals to questions 2a, 2b and 3 reviewed and I will deal with each in turn:

Question 2a - "The specific power of entry used for each visit? (eg. warrant, AD letter from senior management, consent). "

It is unclear how releasing the specific power of entry for historical immigration enforcement visits could prejudice the operation of immigration controls. These powers of entry are set in law, and therefore are public knowledge and not secret tactics of the Home Office that cannot be known publically. By releasing the power of entry used in these historical visits you are just proving whether Immigration Enforcement officers had legal right of entry to the premises during these visits. Whether Immigration Enforcement have carried out historical immigration enforcement visits legally is of high public interest and does not prejudice the legal operation of immigration controls.

Question 2b – "If time constraints allow I would also like redacted copies of the proof of right of entry for each instance as well. " As with question 2a, this question once again is just checking whether certain historical immigration enforcement visits had legal powers of entry and the same arguments apply about the strong public interest. It is unclear how releasing proof of entry in historical visits could prejudice the legal operation of immigration controls.

Question 3 – "How many people did you have 'intelligence' on (eg. a name, description) for each visit?"

This question is once again asking a question in relation to the legality of historic immigration enforcement visits. It is of high public interest as it establishes whether these enforcement visits on East Street over the last 3 years were all acting on intelligence or part of fishing exercises. It is unclear how releasing information of how many people the Home Office had intelligence on during historical visits could prejudice the legal operation of immigration controls. All the information would do is bring accountability to the Home Office for its previous immigration enforcement visits.

And finally, in Question 4 you told me how many people had been detained per month, and not per visit as requested – could this please be corrected?

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

Yours faithfully,

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