

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Andrew Watson (15904)

Responding Unit: Identity & Passport Service (IPS)

Chronology

Original Fol request:	20 August 2010
Public Interest Test (PIT) Letter:	21 September 2010
IPS Response	12 October 2010
Request for internal review:	29 October 2010

Subject of request

1. Mr Watson submitted a request under the Freedom of Information Act ("the Act") to IPS on 20 August 2010. He asked for the following information:
 1. The 2009 annual report of the National Identity Scheme (NIS) Independent Scheme Assurance Panel (ISAP).
 2. The Identity and Passport Service official response to the ISAP 2009 report.
 3. The minutes of all meetings of the Independent Scheme Assurance Panel since its inception.
 4. All papers and presentations presented to meetings of the Independent Scheme Assurance Panel since its inception

The response by IPS

2. The information requested was refused under the following exemptions:

Section 22 was engaged to withhold information in regard to questions 1 and 2. This exemption relates to information that is intended for future publication. The response stated it was the intention to publish the requested information before the end of December 2010.

Section 35(1)(a) was engaged to withhold information relating to question 3. This exemption provides that information is exempt if it relates to the formulation or development of government policy. In addition, IPS stated that locating and retrieving additional information falling within the scope of the request exceeded the appropriate cost limit of £600. Therefore, section 12 was also applied to question 3.

Section 12 was found to be engaged in respect of question 4 in terms of locating and identifying the information requested.

The request for an internal review

3. Mr Watson requested an internal review of the handling of his request. He stated that he was not seeking a review of questions 1 and 2 of his request; this review therefore deals solely with the responses provided to questions 3 and 4.
4. Mr Watson complained that section 35(1)(a) could not be applied to question 3 of his request. He did not believe that the Independent Scheme Assurance Panel (ISAP) role and responsibilities fell within a policy- making remit.
5. Mr Watson also challenged applying section 12 to withhold any information in regard to question 4.
6. Mr Watson's request for an internal review stated:

"I requested the minutes of all meetings of the Independent Scheme Assurance Panel since its inception. You have refused this request, citing the FOI Act section 35 (1) (a) exemption ("Information held by a government department or by is exempt information if it relates to ... the formulation or development of government policy ..."), saying that "The ISAP were not a traditional assurance group ... but acted as an advice group, seeking to guide the development of the ID cards programme ...".

In his foreword to the 2007 Annual Report of the Independent Scheme Assurance Panel, the chairman, Alan Hughes, writes:

"The Panel's remit is restricted to examining the means and method of delivery of the Scheme and the likely efficacy of these plans. It is not concerned with examining the desirability of the Scheme and the policy decisions which led to it, but will raise concerns for the Programme if its objectives or the routes by which they are to be reached are not clear."

Since Mr Hughes states quite clearly that ISAP was not concerned with examining the Scheme's policy decisions, I cannot see how the section 35 (1) (a) exemption applies to the minutes of its meetings. I am therefore requesting a review of this decision.

You also state that not all of the minutes can be located within the cost limits - if this is the case, please send me only the minutes that you have already located.

Similarly, for item 4 of my request, please review your decision, and send me papers and presentations which you have already located."

Procedural Issues

7. Mr Watson's initial request for information was received on 20 August to which IPS provided its substantive response on 12 October. Section 10(1) of the Act sets out the time limit for compliance with a request which is 20 working days following the date of receipt. There is however an exception to compliance with this time limit, such as where qualified exemptions are being considered for which the public interest test is being deliberated.
8. IPS wrote to Mr Watson on 21 September advising him that a qualified exemption was still being considered. In their letter, IPS gave a target date by which the PIT considerations would be concluded, and the substantive response was sent by the revised deadline. IPS therefore met their obligations under the Act.
9. The response was compliant with sections 17(1)(a), 17(1)(b) and 17(1)(c) of the Act as it specified that a qualified exemption applied to some of the information, named the exemption, section 35(1)(a), and stated why it applied.
10. Mr Watson 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.
11. Furthermore, the response also informed Mr Watson in writing of his right of complaint to the Information Commissioner as required by section 17(7)(b) of the Act.

Consideration of the response

12. I have considered the original IPS response in respect of questions 3 and 4.
13. It was not possible to provide Mr Watson with all of the information he requested as that would have exceeded the cost limit, as specified in the fees regulations. However despite this being the case, IPS was able to locate some of the information which was in the form of meeting minutes and they informed Mr Watson of this. Upon consideration though, this information was deemed to be exempt under section 35 (1)(a) of the FoI Act.
14. With regard to question 3, Mr Watson has stated in his request for an internal review that he did not believe that the exemption applied under section 35 was appropriate as the ISAP was not concerned with examining the Scheme's policy decisions.
15. Whilst Mr Hughes, the Chairman of the ISAP, stated that '[the Panel] is not concerned with examining the desirability of the Scheme and the policy decisions which led to it...', I have established with IPS that this did not prevent it looking at policy decisions being made in the development of the

scheme or policy decisions governing such things as how the scheme was to be delivered.

16. It is the discussion of these policies and the process of forming policy in these areas which exempts these minutes from disclosure under section 35(1)(a). What was out of scope for the ISAP was the policy which lead to the decision to build the Scheme, those being questions as to whether or not there should be ID cards and a National Identity Scheme.
17. With regard to question 4, Mr Watson asks in his review for a copy of the papers and presentations which have already been located. I have established with IPS that no information within the scope of this question has been located.
18. From the minutes located for question 3, the papers put before the ISAP are not well documented in the meeting minutes, with it being unclear what the title or version number of the document or presentation is.
19. IPS has estimated that there were 3 papers or presentations for each meeting. Records are not stored in a central location and the searches required to establish whether any information is held would exceed the cost limit. This estimate does not include any time that would be required to redact the documents.

Advice and Assistance

20. Not applicable.

Conclusion

21. Having considered the response, I am satisfied the IPS were correct in their citing of section 35(1)(a) and section 12 for questions 3 and 4 respectively.
22. I am satisfied that sections 10(1), 17(1)(a), (b) and (c), and 17(7)(a) and (b) of the Act were complied with.

**Information Access Team
Home Office
26 November 2010**