



Home Office

Performance, Assurance and Governance Directorate
2 Marsham Street
London SW1P 4DF
Switchboard 0207 035 4848

www.gov.uk

R Brown
request-615709-a6901e27@whatdotheyknow.com

6 May 2020

Dear R Brown

Freedom of information request (our ref. 56277: internal review)

Thank you for your email dated 30 November 2019, in which you asked for an internal review of our response to your Freedom of Information (FOI) request for information on the EU Settlement Scheme. A full copy of your request is set out in Annex A. I am sorry that you have not had an earlier reply.

We note that this is the fourth in a series of requests about this issue. You have received separate responses to your FOI request 54055 and for internal reviews of 55323 and 54248. This review will focus on your most recent request 56277.

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 and assessed the reasons why information was withheld from you. I can confirm that I was not involved in the initial handling of your request.

The Home Office response of 19 November 2019 explained that the information you have requested is intended for future publication and is exempt from disclosure under section 22 of the Freedom of Information Act (FOIA). This provides that information can be withheld if it is held with a view to its publication at some future date. The date itself does not need to have been determined in order for section 22 to apply. The reasons for our decision were set out in our original response.

I have considered your original request, the original response and the reasons why section 22 of the FOIA was cited. I can confirm that this exemption was correctly applied to withhold the requested data. As the intention to publish pre-dates your request, the information is held with a view to its publication and I consider that it is reasonable in all the circumstances to withhold the information until the planned publication date. The original response included a public interest test in relation to section 22. I consider that the

conclusion reached was reasonable and that the overall balance of the public interest falls in favour of withholding the information for the reasons we have already provided.

This conclusion is subject to one qualification. Section 22 can only be applied to information which is actually planned to be published. I note that the public interest test in the original response states the following:

The Department publishes migration statistics quarterly and intends to publish statistics on the EU Settlement Scheme later this month. Although the exact breakdown of the information requested will not be published, it will form part of the overall figures. Premature release of the subset of data requested could form part of a series of requests which together could build up a picture of the overall data due to be published.

Where information will not be published, but forms a subset of information that will be published, section 36(2)(c) is engaged because it would be prejudicial to the effective conduct of public affairs to release a subset of information prior to the release of the full publication. The public interest arguments in this case are the same for both exemptions. In the case of statistical data, the application of section 36(2)(c) does not require the opinion of a Minister as qualified person.

I note that you have also asked us to comment on 'why The Home Office believes it is fair to exclude a group for which you have created separate application process, Zambrano carers.'

Applications to the EU Settlement Scheme are made through an online system, although there are certain exceptions where applications may be submitted using a paper application form. Applications made online are recorded directly on a digital case working system from which the data underpinning the statistical reports are extracted. Applications made using a paper form are captured and processed using a separate caseworking system. At present, paper-based applications are not included in the published statistics. This means that the total number of applications received, grants of status, and other outcomes (refusals, withdrawn or void, or invalid cases) are not fully captured in the report.

The Home Office is currently developing electronic integration of the two systems. It was the Home Office's intention to provide a more complete account of all applications received for the quarterly publication in May 2020, but due to the impacts of Covid-19, this has not been possible. It is now intended that this information will be included in the following quarterly publication, in August 2020. I can confirm that the Home Office has [announced](https://www.gov.uk/government/collections/eu-settlement-scheme-statistics) that it will be publishing the next quarterly edition of the EU Settlement Scheme official statistics on 14 May 2020. The data will be available via the following link: <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

Zambrano carers are one of a number of cohorts of EU Settlement Scheme applicants who must apply using a paper application form rather than through the online application process. This is because by their nature they are more complicated cases which require a larger amount of supporting evidence. To try to accommodate the necessary range of questions and evidence requirements in the online form would have added complexity to the standard application process, negatively impacting all other EU Settlement Scheme applicants as well as incurring greater costs to the taxpayer as a result of the further IT development required. Requiring Zambrano carers and others relying on a derivative right of residence to apply on bespoke paper application forms enables the Home Office to ensure that all the necessary information and evidence is obtained from these cohorts without unnecessarily asking for the same information from those applying solely on the basis of their UK residence.

My conclusion is that the original response was substantially correct, although in addition to section 22 it should have cited section 36(2)(c) for any requested information that will not itself be published. This response has provided answers to the specific questions you have raised in your request for an internal review.

Yours sincerely

J Conquest
Information Rights Team

Annex A – Original request

Dear Home Office,

I would be grateful if you could clarify it. Specifically, please can you explain what is meant by 'cancellation'? It may also assist if you provide a brief explanation of your understanding of the term 'withdrawal'.

Cancellation would result if a mistake in the application were found and not rectified. Also, the application could have been deemed incomplete by Home Office.

Withdrawal would result if the applicant asked the Home Office to stop considering the application prior to a decision having been made.

"In most cases, your outstanding immigration application will not be considered if you apply for the EU Settlement Scheme." <https://www.gov.uk/settled-status-eu-citizens-families/after-youve-applied>

Yours faithfully,

R.Brown

Annex B – Response letter

R Brown

request-615709-a6901e27@whatdotheyknow.com

19 November 2019

Dear Sir or Madam,

Thank you for your enquiry of 4 November in which you requested information on the EU Settlement Scheme. Your request has been handled as a request for information under the Freedom of Information Act 2000.

Information Requested

Initial Request

Please provide the number of

refusals -cancellations -withdrawals

for settlement under the EU Settlement Scheme for paper based applications since 1 April 2019 to 20 October 2019.

Subsequent Clarification

I would be grateful if you could clarify it. Specifically, please can you explain what is meant by 'cancellation'? It may also assist if you provide a brief explanation of your understanding of the term 'withdrawal'.

Cancellation would result if a mistake in the application were found and not rectified. Also, the application could have been deemed incomplete by Home Office.

Withdrawal would result if the applicant asked the Home Office to stop considering the application prior to a decision having been made.

"In most cases, your outstanding immigration application will not be considered if you apply for the EU Settlement Scheme." <https://www.gov.uk/settled-status-eu-citizensfamilies/after-youve-applied>

Response

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 22 of the Freedom of Information Act. This provides that information can be withheld if it is intended for future publication.

Section 22 of the Act is a qualified exemption and requires consideration of the public interest test, which can be found in the Annex below.

Furthermore, data released under FOI requests are done so in-line with published statistics releases. The current published statistics cover the period until July 2019, with the latest quarterly release to be published later this month.

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 foirequests@homeoffice.gov.uk, quoting reference 56277. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request will be reassessed by staff 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.

Yours faithfully,

J Rushton Customer Service Operations

Annex to the response letter - 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 favour of withholding the information. 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. The 'right to know' must be balanced against the need to enable effective government, and to serve the best interests of the public.

Please note that 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 statistics relating to migration. Disclosure of the information requested would increase accountability and transparency and enhance the public's understanding of current trends in the EU Settlement Scheme. All of these factors are in the public interest and there is some weight to be given to the considerations in favour of disclosing the information.

Considerations in favour of withholding the information

The Department publishes migration statistics quarterly and intends to publish statistics on the EU Settlement Scheme later this month. Although the exact breakdown of the information requested will not be published, it will form part of the overall figures. Premature release of the subset of data requested could form part of a series of requests which together could build up a picture of the overall data due to be published. Although it is accepted that you may not necessarily be interested in making subsequent requests, information released to one person under the FOI Act is, in effect, released to the public at large. This would provide an opportunity for others to submit additional requests ahead of the planned publication date in order to obtain the information prematurely.

Premature disclosure of statistics without adhering to established pre-publication procedures (which include internal consultation about the final statistics being published) would undermine the Department's ability to use its staff resources effectively in a planned way, so that reasonable publication timetables are not affected.

We conclude that the overall balance of the public interest lies in favour of withholding the information to ensure that the Home Office is able to publish migration statistics in a managed and coherent way.

Annex C – Internal Review request

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 'Paper Application Refusals under the EU Settlement Scheme'.

You have not addressed the following:

- 1.) Why it is not in the public interest
- 2.) Whether or not a fixed date has been set for publication
- 3.) Why you believe it is fair to exclude a group for which you have created separate application process, Zambrano carers.
- 4.) Whether or not you believe the public interest to be equally balanced or not. If not, why

To sum, in all the circumstances it is reasonable to withhold the information until its planned publication.

It is a qualified exemption and therefore public authorities must consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the requested information.

The intention to publish must pre-date the request.

A general intention to publish some information will not suffice.

Your decision must be:

- * sensible;
- * in line with accepted practices; and
- * fair to all concerned.

Where the public interest is equally balanced, the authority must disclose the requested information.

In most instances public authorities will not be able to argue that information is too technical, complex or misleading to disclose, or that it may be misunderstood or is incomplete, because they can explain it or set it into context.

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

Yours faithfully,

R.Brown

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