



Home Office

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Wayne Pearsall
[mailto:request-215602-
a23d7fe1@whatdotheyknow.com](mailto:request-215602-a23d7fe1@whatdotheyknow.com)

5 January 2015

Dear Mr Pearsall,

Freedom of information request (our ref. 31979): Internal Review

Thank you for your email of 15 August 2014 in which you asked for an internal review of our response to your Freedom of Information (Fol) request.

I have now completed the review. I have consulted the policy unit which provided the original response. 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 original response was not correct.

Yours sincerely

M Seedansingh

Information Access Team

E-mail info.access@homeoffice.gsi.gov.uk

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Wayne Pearsall (reference 31979)

Responding Unit: Knowledge and Information Management Unit-KIMU

Chronology

Original Fol request: 7 June 2014

KIMU response: 5 August 2014

Request for internal review: 15 August 2014

Subject of request

1. The Fol request of 7 June 2014 included three questions asking for information on Persons Subject to Immigration Control (PSIC). The request is set out in full at **Annex A**.

The response by KIMU

2. The response of 5 August 2014 explained that the information requested in Question 1, was being withheld under section 21 of the Freedom of Information Act 2000. It advised that for Questions 2 and 3, the information would need to be requested under the Data Protection Act (DPA) from the relevant court. The response is set out in full at **Annex B**.

Mr Pearsall's request for an internal review

3. On 15 August 2014 Mr Pearsall requested an Internal Review of the response to questions 2 and 3. The request for an Internal Review is set out in full at **Annex C**.

Procedural issues

4. The initial FOI Request is recorded as having been received on 7 June 2014. KIMU provided a substantive response on 5 August 2014, which represents 42 working days after the initial request. Therefore the Home Office was in breach of section 10(1) of the FOI Act by failing to provide a response within the statutory deadline of 20 working days.
5. The Home Office response informed Mr Pearsall in writing of his right to request an independent review of the handling of his request as required by section 17(7) (a) of the Act. The response also advised of the right of complaint to the Information Commissioner as required by section 17(7) (b) of the Act.

Consideration of the response

6. The response explained that for Question 1, the information is withheld under section 21(1) of the Act and included two web links which detailed the definition and a further explanation of PSIC.
7. The response also explained that for Questions 2 and 3, a request under Section 14 of the DPA would need to be made to the relevant court where a data subject's personal information is inaccurate or where the data subject has suffered damage by any contravention of the DPA.
8. The response explained that the statement in the letter of 22 May 2014 from UKVI, where the data subject can apply to have their details removed, was referring to section 14 of the DPA. The letter should have stated "Once those persons ceased to be

subject to Immigration Control, they may apply under the Data Protection Act to have their details amended to include reference to new status”.

Request for Internal Review

9. The request for an Internal Review claims that the Home Office holds policy documentation or guidance, which outlines the manner in which employees handle requests for the destruction of Biometric Information.
10. Questions two and three asked:

Question two “Please provide any information you store, that outlines the process a person must follow to have their data destroyed, in accordance with the Data Protection Act.”

Question 3 states “Please provide your own policy which your data controllers/employees must follow in accordance with this provision”.
11. I have reviewed the request for information, considered Mr Pearsall’s Internal Review Request and have consulted with the policy area.
12. The response answered questions 2 and 3 together however, they were two different questions and needed to be answered separately. I am able to provide the information now.
13. With regards to question 2, the response did not provide the correct information. If an individual wishes to have their biometric information destroyed, they should contact:

The Immigration Fingerprint Bureau (IFB)
5th Floor, Lunar House
40, Wellesley Road
Croydon
CR9 2BY
14. With regards to question 3, the Home Office policy guidance for staff can be found in this link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353147/Biometric_information_-_case_working_v1.0EXT.pdf
15. Therefore, the Home Office does hold the information on the process for a person to follow, to have their data destroyed, as well as Internal Guidance for staff to follow when dealing with this process.

Conclusion

16. The response was provided 42 days after the request was made. This exceeded the 20 day limit to respond therefore, KIMU was in breach of Section 10(1) of the FOI Act.
17. The response provided by KIMU incorrectly explained that for questions 2 and 3, an application has to be made to the court, under section 14 of the DPA and that the Home Office does not hold the information. Therefore, the response provided by KIMU for questions 2 and 3 was incorrect.
18. The contact details for requesting biometric details in particular fingerprints, to be destroyed in accordance with the DPA and the Policy/Guidance for staff to follow when dealing with such requests, has now been provided.
19. The request was misunderstood as a request for general personal data, and not biometric data in particular, I apologise for this oversight.

Information Access Team
Home Office
January 2015

Annex A

From: Wayne Pearsall [<mailto:request-215602-a23d7fe1@whatdotheyknow.com>]

Sent: 07 June 2014 17:26

To: FOI Requests

Subject: na / Freedom of Information request - Person Subject to Immigration Control

Dear Home Office,

The term 'person subject to immigration control' (PSIC) is defined in s.13(2) of the Asylum and Immigration Act 1996 as a person who requires leave to enter or remain in the United Kingdom (whether or not such leave has been given).

Apparantly: Only the following categories of person do not require leave to enter or remain in the UK:

- (i) British citizens;
- (ii) certain Commonwealth citizens with a right of abode in the UK;
- (iii) citizens of an EEA country, ("EEA nationals") and their family members, who have a right to reside in the UK that derives from EC law. The question of whether an EEA national (or family member) has a particular right to reside in the UK (or in another Member State e.g. the Republic of Ireland) will depend on the circumstances, particularly the economic status of the EEA national (e.g. whether he or she is a worker, self-employed, a student, or economically inactive etc.).
- (iv) persons who are exempt from immigration control under the Immigration Acts, including diplomats and their family members based in the United Kingdom, and some military personnel.

I recently received a letter from your litigation department. This letter outlined the following:

"In relation to your query regarding UKVI's obligation under the Data Protection Act, UKVI has an obligation to maintain effective immigration control and thus will retain the details of persons who remain subject to immigration control. Once those persons cease to be subject to immigration control, they may apply under the Data Protection Act to have their details destroyed." (A copy can be viewed here:

https://docs.google.com/document/d/1jOOOr2EyB2g2AF_5fICamGruacOWKPnzHz3MYXRiKBM/pub (Note: I have highlighted specific points with a black box).

I would like to confirm that the above information about who is considered a PSIC is correct - Particularly point (iii) [EEA and their Family Members].

Therefore:

- 1) Please confirm whether you hold any documentation which outlines who is to be considered a PSIC. If you hold such documentation, please provide it.
- 2) Please provide any information you store, that outlines the process a person must follow to have their data destroyed, in accordance with the Data Protection Act.
- 3) Please provide your own policy which your data controllers / employees must follow in accordance with this provision.

Please note:

I am only interested in current policy documents / guidance / messages.

Yours faithfully,

Wayne Pearsall

Please use this email address for all replies to this request:

request-215602-a23d7fe1@whatdotheyknow.com

Is FOIRequests@homeoffice.gsi.gov.uk the wrong address for Freedom of Information requests to Home Office? If so, please contact us using this form:

https://www.whatdotheyknow.com/change_request/new?body=home_office

Disclaimer: This message and any reply that you make will be published on the internet.
Our privacy and copyright policies:

<https://www.whatdotheyknow.com/help/officers>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

Annex B

Shared Services Directorate
2 Marsham Street
London SW1P 4DF
020 7035 4848 (switchboard)
www.homeoffice.gov.uk

Mr Wayne Pearsall
Via e-mail to request-215602-a23d7fe1@whatdotheyknow.com

05 August 2014

Freedom of Information request (our reference: 31979)

Dear Mr Pearsall

Thank you for your e-mail dated 07 June 2014 which you ask for information regarding a person subject to immigration control (PSIC). Your request has been handled as a request for information under the Freedom of Information Act (FOIA) 2000.

You asked for the following information

- 1) Please confirm whether you hold any documentation which outlines who is to be considered a PSIC. If you hold such documentation, please provide it.
- 2) Please provide any information you store, that outlines the process a person must follow to have their data destroyed, in accordance with the Data Protection Act.
- 3) Please provide your own policy which your data controllers / employees must follow in accordance with this provision.

For question 1 I can confirm that the Home Office holds this information, however it is being withheld from disclosure under section 21(1). The definition of a person subject to immigration control (PSIC) is defined in legislation in section 155(9) of the Immigration and Asylum Act 1999

<http://www.legislation.gov.uk/ukpga/1999/33/section/115>

For a more detailed explanation please see link below.

<http://www.hmrc.gov.uk/manuals/cbtmanual/CBTM10120.htm>

For question 2 & 3, after consulting with the relevant unit I understand the statement, in our letter dated 22 May 2014, where the data subject can apply to have their details removed was referring to section 14 of the Data Protection Act (DPA). The application is to the court where a data subject's personal information is inaccurate or where the data subject has suffered damage by any contravention of the DPA. As this is not an application to the Home Office itself, this information is not held.

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 31979. 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

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.

Yours sincerely

Andy Woodgate Information Access Team

Annex C

From: Wayne Pearsall [<mailto:request-215602-a23d7fe1@whatdotheyknow.com>]
Sent: 15 August 2014 02:05
To: FOI Requests
Subject: 31979 Internal review of Freedom of Information request - Person Subject to Immigration Control

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 'Person Subject to Immigration Control' 31979.

I note that before attempting to go to court (ETC) to resolve any form of complaint, it is seen by the courts, ICO, PHSO (etc) as a requirement to raise the matter with the organisation concerned. (Pre Action Protocol / Exhausting the Internal Complaints Proceedure ETC).

For this reason, I am confident that the Home Office would infact store some form of guidance for handling such complaints, or pre-action protocol letters.

Furthermore, I draw attention to Part VII of the Immigration and Asylum Act 1999 (Fingerprinting - <http://www.legislation.gov.uk/ukpga/1999/33/part/VII/crossheading/fingerprinting>).

I particularly draw attention to:

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143 Destruction of fingerprints..

(1)If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period beginning with the day on which they were taken. .

(2)If a person from whom fingerprints were taken proves that he is— .

(a)a British citizen, or .

(b)a Commonwealth citizen who has a right of abode in the United Kingdom as a result of section 2(1)(b) of the 1971 Act, .

the fingerprints must be destroyed as soon as reasonably practicable.

F1(3).

F1(4).

F1(5).

F1(6).

F1(7).

F1(8).

(9)Fingerprints taken from F [F2(within the meaning of section 141(7))] must be destroyed when fingerprints taken from the person whose dependant he is have to be destroyed. .

(10)The obligation to destroy fingerprints under this section applies also to copies of fingerprints. .

(11)The Secretary of State must take all reasonably practicable steps to secure— .

(a)that data which are held in electronic form and which relate to fingerprints which have to be destroyed as a result of this section are destroyed or erased; or .

(b)that access to such data is blocked. .

(12)The person to whom the data relate is entitled, on request, to a certificate issued by the Secretary of State to the effect that he has taken the steps required by subsection (11).

(13)A certificate under subsection (12) must be issued within three months of the date of the request for it. .

F3(14).

(15)“Specified period” means— .

(a)such period as the Secretary of State may specify by order; .

(b)if no period is so specified, ten years.

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For this reason, I am confident that the Home Office would hold a policy document which outlines the manner in which employees are to handle the requests for destruction of Biometric Information.

I am therefore expecting an Internal Review of the response provided to Questions 2 and 3.

I will overlook the obvious typographical error in stating the definition is held in S.155(9) in response to Question 1.

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

Yours faithfully,

Wayne Pearsall

Annex D

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