



Home Office

Performance, 020 7035 4848  
Assurance and (switchboard)  
Governance Directorate [www.gov.uk](http://www.gov.uk)  
2 Marsham Street  
London SW1P 4DF

Edward Williams  
request-470273-  
8111507f@whatdotheyknow.com  
5 June 2018

Dear Mr Williams

**Freedom of Information request (our ref. 47714): internal review**

Thank you for your e-mail of 13 April 2018, in which you asked for an internal review of our response to your Freedom of Information (FoI) for information which stipulates that those held at UK ports who are NOT under arrest cannot use their telephones.

I have now completed the review. I have examined the response and I have considered whether the correct procedures were followed and assessed the reasons behind the response. I can confirm that I was not involved in the initial handling of your request.

Your request can be viewed at **Annex A** and response is at **Annex B**. The response provided some information, whilst withholding some information under section 31(1)(f) of the FOI Act. The Home Office also neither confirmed nor denied it held any information relating to Mr Sellner or Ms Pettibone under section 40(5) of the Act.

Your internal review request is at **Annex C**, you did not state why you wanted an internal review, as such I have reviewed the entire request.

In relation to the personal information you requested, Section 40(5) of the Act provides:

*(5) The duty to confirm or deny-*

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and*
- (b) does not arise in relation to other information if or to the extent that either-*
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded.*
  - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data are being processed).*

Whether an individual has been granted or refused access to the UK constitutes that individual's personal data. The issue, therefore, is whether we can provide this information

without contravening any of the data protection principles. Protecting individuals' personal data is of the utmost importance and confirming or denying whether the Home Office holds the requested information would in effect provide it. Following consideration, the Home Office has concluded that it cannot confirm whether or not the information is held. As section 40 is an absolute exemption, no public interest test arguments arise.

It is important to emphasise that this internal review should not be taken to mean that the information requested either is or is not held by the Home Office.

In regard to the exemption contained within section 31(1)(f), having reviewed the documentation, I can confirm this exemption was incorrectly applied. The scope of the request sought "all regulations, circulars, guidance, training manuals etc. which stipulate that those held at UK ports who are NOT under arrest cannot use their telephones." You were provided two documents heavily redacted except for a section in each document. This was a section in Annex A, entitled "5.5 Detainees' Cash on page 6" and a section in Annex B entitled "4.3.4 Provision of Telephones"

These two sections are the only relevant sections that relate to the scope of the request. They are the only parts of the documents and the only information the Home Office holds on the accessing of Telephones by those held at UK ports. The rest of the documents you were supplied with were redacted as a result. The response informed you that this information was withheld under section 31(1)(f), this was an incorrect assessment. This information is actually out of scope of your request and should not have been included. As the rest of the document is out of scope, the exemption under 31(1)(f) does not apply.

The response did not follow best practice. By providing you a mostly blanked out document the reply implied information concerning telephone access was being withheld from you. This is not the case. You were provided with all the information the Home Office holds on telephone access in full. Ideally the original response should have extracted the relevant sections of the documents and placed them in the reply to avoid confusion. The engagement of section 31(1)(f) was an attempt to withhold information which was in fact outside the scope of the request.

## **Conclusion**

The original response was correct to cite section 40(5) to neither confirm nor deny any information was held concerning Mr Sellner or Ms Pettibone. This internal review should not be taken to mean that the information requested either is or is not held by the Home Office.

In relation to section 31(1)(f), the exemption was incorrectly cited. You were however provided with all the relevant information held by the Home Office concerning telephone access.

This concludes the internal review.

Yours sincerely

Martin Riddle  
Information Rights Team

Switchboard 020 7035 4848

E-mail

[FOIRequests@homeoffice.gsi.gov.uk](mailto:FOIRequests@homeoffice.gsi.gov.uk)

## **Annex A – Original request**

Dear Home Office,

According to a youtube video:

<https://www.youtube.com/watch?v=4glysfmgOC0>

Mr Martin Sellner and his partner claim that they were both ordered by Home Office staff not to use their telephones.

1. Please provide all regulations, circulars, guidance, training manuals etc. which stipulate that those held at UK ports who are NOT under arrest cannot use their telephones.
2. Provide all records showing why Mr Sellner and his partner Ms. Brittany Pettibone were denied access to the UK, including records which were in existence before their arrival in the UK.

Please reply within 20 working days.

Yours faithfully,

## **Annex B – Response**

Dear Edward Williams

### **FREEDOM OF INFORMATION REQUEST**

Thank you for your e-mail of 13 March, in which you ask for information on the detention and deportation of named individuals. Your request has been handled as a request for information under the Freedom of Information Act 2000 (FOIA).

**According to a youtube video:**

<https://www.youtube.com/watch?v=4glysfmgOC0>

**Mr Martin Sellner and his partner claim that they were both ordered by Home Office staff not to use their telephones.**

**1. Please provide all regulations, circulars, guidance, and training manuals etc. which stipulate that those held at UK ports who are NOT under arrest cannot use their telephones.**

In relation to question one, we have interpreted your request as referring to those held at Short Term Holding Facilities (STHF) at port. Tascor, the service provider who run STHFs in the United Kingdom on behalf of the Home Office, have guidance around the use of telephones.

Section 5.5 in the 'Holding Room Standard Operating Procedure 02: Detainee Admission and Discharge Procedures' explains that detainees are allowed to make a phone call on arrival and those without the funds to make phone calls will be offered free calls for the duration they are held there. Section 4.3.4 in the 'Holding Room Standard Operating Procedure 03: Detainees' Care and Welfare in Holding Rooms' explains that detainees without the funds to make phone calls will be offered free calls for the duration they are held there.

Redacted copies of both the above documents are attached with this response at Annex A and Annex B.

The documents have been redacted and information has been withheld under Section 31(1) (f) of the Freedom of Information Act 2000. Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion set out in the following Annex.

**2. Provide all records showing why Mr Sellner and his partner Ms. Brittany Pettibone were denied access to the UK, including records which were in existence before their arrival in the UK.**

We neither confirm nor deny whether we hold the information that you have requested. Under section 40(5) of the FOIA, the duty to say whether or not we hold information does not arise if it relates to personal information.

Section 40 of the FOI Act is an absolute exemption which requires no public interest test argument.

**Conclusion**

We conclude that the balance of the public interest lies in neither confirming nor denying whether we hold the information. This response should not be taken as confirmation that the information you have requested is or is not held by the Home Office.

However 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.gsi.gov.uk](mailto:foirequests@homeoffice.gsi.gov.uk), quoting reference 47721. 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 would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

Yours sincerely

**Section 31(1) (f) – operation of Law Enforcement – Maintenance of good order in prisons and other places of lawful detention.**

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, or the considerations for and against the requirement to say whether the information requested is held or not. 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.

**Public Interest Test**

Considerations in favour of disclosing the information

There is a public interest in disclosing the information to you as it will increase the transparency of the work of Home Office. There is also a public interest in ensuring public confidence in the security of the United Kingdom’s immigration detention estate.

Considerations in favour of withholding the information

In this instance there are also specific considerations in favour of maintaining the exemption in order to ensure the integrity of the United Kingdom’s immigration detention estate. If we were to disclose this information it could substantially prejudice the operation of the Detention Estate. This is because disclosure may enable individuals to obtain information on the security procedures deployed during an escape which could compromise the integrity of the security at the facility. This is clearly not in the public interest.

We have concluded that the balance of the public interest identified lies in favour of maintaining the exemption as there is a greater overall public interest in ensuring that the Home Office is able to maintain the security of the United Kingdom’s immigration detention estate.

## **Annex C – Internal Review**

Dear Home Office,

Please pass this on to the person who conducts Freedom of Information reviews.

Reference: 47714

Date: 13 April 2018.

I am writing to request an internal review of Home Office's handling of my FOI request 'Preventing a person held at UK immigration from using a telephone'.

A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/preventing\\_a\\_person\\_held\\_at\\_uk\\_i](https://www.whatdotheyknow.com/request/preventing_a_person_held_at_uk_i)

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