



Home Office

Corporate Services  
2 Marsham Street  
London SW1P 4DF

020 7035 4848  
(switchboard)

[www.gov.uk](http://www.gov.uk)

Clive Waterman  
<mailto:request-239855-047aeb7e@whatdotheyknow.com>

22 January 2015

Dear Mr Waterman

**Freedom of Information Request – Our Reference: 33552**

Thank you for your e-mail of 18 November 2014, in which you ask a number of questions regarding Subject Access Requests (SARs).

Your request has been handled as a request for information under the Freedom of Information Act 2000. Our response is in the attached annexes; data has been provided for valid SAR requests received by UK Visas and Immigration (UKVI), HM Passport Office (HMPO) and core Home Office between October 2013 and September 2014.

The annexes provide some of the information you have asked for. You requested the internal SAR training and guidance material. We have provided a redacted copy of the training and guidance material. The information which has been redacted is subject to the following exemptions: section 36(2)(c) (prejudice the effective conduct of public affairs), section 40(2) (personal information), section 31(1)(e) (prejudice to the operation of the immigration controls) and section 42(1) (legal professional privilege) of the FOI Act. Sections 31, 36 and 42 are qualified exemptions, so we must carry out a Public Interest Test to balance the public interest in disclosure against the public interest in favour of withholding the information. Section 40 is an absolute exemption; this means we are not required to carry out a public interest test. Public interest test arguments and further detail about the application of the absolute exemption can be found at Annex D.

We are unable to provide the information you have requested regarding the reasons for the delay in the case of unanswered requests. There are 169 such requests. Identifying the reasons for the delays would require the examination of each individual file, which we have estimated would take an average of ten minutes per file. This amounts to a total of over 28 hours. Providing a response to this part of your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

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 33552. 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  
Third Floor, Peel Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [info.access@homeoffice.gsi.gov.uk](mailto: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

Silo Monekosso

**Information Access Team**

## ANNEX A

### Information Requested regarding SARs - UKVI

1. How many did UKVI receive in the twelve months (Oct 2013 - Sept 2014)?

16,871

2. How many were processed within the legal time limit?

15,469 (92%)

3. How many were not processed within the legal deadline?

1,402 (8%)

4. Please provide a breakdown of how long applications took to process. 1 day. 2 days.... 40 days.

See attached annex 1

5. Noting that legally all of the applications from the period above should have been concluded by now. How many remain unanswered?

167(1%)

6. Of 5, please provide details of how long the cases have been open. And where possible the reason for failing to respond to the request.

Date received	No. outstanding
25/11/13 – 24/02/14	3(2%)
25/02/14 – 24/05/14	6(3%)
25/05/14 – 24/08/14	89(53%)
25/08/14 – 24/11/14	69(41%)

7. Please provide internal sar training material.

See attached annex 2.

8. Please provide internal sar guidance material.

See attached annex 2.

## ANNEX B

### Information Requested regarding SARs - HMPO

1. How many did HMPO receive in the twelve months (Oct 2013 - Sept 2014)?

1,956

2. How many were processed within the legal time limit?

1,954(99%)

3. How many were not processed within the legal deadline?

2(0.1%)

4. Please provide a breakdown of how long applications took to process. 1 day. 2 days.... 40 days.

We do not record the length of time taken to respond to individual requests; many are dealt with within 1 - 2 days whilst others can take nearly the full 40 days. We are always reliant on receiving information from other parts of the organisation in a timely manner. Any cases that exceed the 40 days are recorded and reported on a monthly basis.

5. Noting that legally all of the applications from the period above should have been concluded by now. How many remain unanswered?

HMPO have no SARs outstanding from September 2014; they have not missed this target since May 2014, when they missed the 40 day target on 1 case by 1 day.

6. Of 5, please provide details of how long the cases have been open. And where possible the reason for failing to respond to the request.

HMPO have no cases outstanding.

9. Please provide internal sar training material.

See attached annex 2.

10. Please provide internal sar guidance material.

See attached annex 2.

---

## ANNEX C

### Information Requested regarding SARs – Core Home Office

1. How many did the core Home Office receive in the twelve months (Oct 2013 - Sept 2014)?

30

2. How many were processed within the legal time limit?

21(70%)

3. How many were not processed within the legal deadline?

9(30%)

4. Please provide a breakdown of how long applications took to process. 1 day. 2 days.... 40 days.

We do not record the length of time taken to respond to individual requests for the core Home Office.

5. Noting that legally all of the applications from the period above should have been concluded by now. How many remain unanswered?

2(7%)

6. Of 5, please provide details of how long the cases have been open. And where possible the reason for failing to respond to the request.

3 months.

7. Please provide internal sar training material.

See attached annex 2

8. Please provide internal sar guidance material.

See attached annex 2

---

## ANNEX D

You asked for internal SAR training and guidance material which is included as an attachment with this response. We have provided a redacted version; it has been annotated to show where the particular FOI exemptions cited below apply.

### **Public interest test arguments in relation to section 31**

*Section 31- Law enforcement.*

Section 31(1)(e) states:

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—  
(e) the operation of the immigration controls,*

### **Public Interest Test**

Section 31 requires the public interest test to be considered as it is a qualified exemption. We have to balance the public interest in disclosing the requested information against the public interest in disclosing it.

### **Considerations in favour of disclosing the information**

There is a general public interest in increasing public awareness of the training and guidance issued to staff responding to SARs. Disclosure of this type of information demonstrates openness, transparency and accountability in how resources are used. Disclosure of the information might increase transparency about how the Home Office decides what information to disclose and what information to redact in response to SARs. For individuals making SARs it would give them insight into why redactions may have been made to their personal information where a disclosure is made.

### **Considerations in favour of withholding the information**

On the other hand, disclosure of the requested information would greatly increase the likelihood that an individual could deduce the specific exemptions applied in their disclosure which would (a) undermine the practical application of the Data Protection Act exemptions and (b) prejudice effective immigration control by alerting an individual to information or actions which could result in adverse consequences. This is because all redactions are carried out in accordance with the permitted exemptions under the Data Protection Act. These allow for withholding material for a variety of reasons including, for example, where a crime is suspected. For this reason, release of the detailed guidance showing how the department comes to such conclusions could prejudice its ability to identify such cases. There is a strong public interest in maintaining effective immigration control by being able to keep certain information and plans relating to individuals subject to immigration control confidential.

### **Conclusion**

Whilst it is considered that disclosing the requested information maintains confidence in Home Office procedures, we have concluded that its disclosure would benefit those seeking to circumvent immigration control and therefore prejudice effective immigration control.

## **Public interest test arguments in relation to section 42**

Section 42 *Legal professional privilege.*

*(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.*

### **Public Interest Test**

Section 42 requires the public interest test to be considered as it is a qualified exemption. We have to balance the public interest in disclosing the requested information against the public interest in disclosing it.

### **Considerations in favour of disclosing the information**

There is a general public interest in increasing public awareness of legal advice in relation to SARs requests. Disclosure of this type of information demonstrates openness and transparency and allows individuals to understand decisions taken by public authorities.

### **Considerations in favour of withholding the information**

On the other hand, disclosure of the requested information would prevent public authorities from seeking and receiving legal advice in confidence and from maintaining confidentiality in legal proceedings. The public interest lies in withholding information which constitutes advice given by legal advisers in circumstances where legal professional privilege would apply.

### **Conclusion**

Whilst it is considered that disclosing the requested information allows for transparency, we have concluded that its disclosure would undermine legal advice given to public authorities.

## **Public interest test arguments in relation to section 36**

Section 36 Prejudice to effective conduct of public affairs:

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

### **Public Interest Test**

Section 36 requires the public interest test to be considered as it is a qualified exemption. We have to balance the public interest in disclosing the requested information against the public interest in disclosing it.

### **Considerations in favour of disclosing the information**

We recognise that the processes whereby the Home Office answers SARs are a matter of public interest to the extent that they might affect the way in which the Department meets its legal obligations under the Data Protection Act. It can be argued that the Department's procedures in processing Subject Access Requests (SARs) should as far as possible be transparent and open to public scrutiny.

### **Considerations in favour of withholding the information**

However, the ability of the Home Office to meet its objectives and legal obligations is dependent on the ability of officials to issue clear and detailed guidance on its internal procedures. If such guidance were to be released in its entirety, this could result in less comprehensive and useful guidance being produced in the future. This, in turn, could result in less consistency and compliance in SAR case working. The public interest would not be served in this instance by releasing in its entirety guidance on purely internal procedures for processing SARs to an audience for whom it was never intended and by whom it would be open to misinterpretation and possible misuse.

### **Conclusion**

In the reasonable opinion of a 'qualified person', disclosure would give rise to the prejudice in question. We conclude that the balance of the public interest lies in withholding the information.



## Section 40 – Personal Data

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the **M1** Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles

Section 40(2) of the Act (by virtue of section 40(3)(a)(i)) is also applicable to redactions made in the document where names and contact information for third parties is given in the document. Section 40(2) is an absolute exemption and after careful consideration, we have concluded that disclosure of individual’s names and contact information would not be in compliance with the general “fairness” test within the first data protection principle, and would therefore be a breach of the Data Protection Act 1998.