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Clive Waterman
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23 February 2015

Dear Mr Waterman

Freedom of Information request (our ref. 33552): internal review

Thank you for your e-mail of 29 January 2015, in which you asked for an internal review of our response to your Freedom of Information (Fol) request about Subject Access Request (SAR) performance figures, guidance and training.

I have now completed the review. I have examined all the relevant papers, including the information that was withheld from you, 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 confirm that I was not involved in the initial handling of your request.

My findings are set out in the attached report. My main conclusion is that the original response was largely correct, although we provided you with incorrect date ranges in answer to question 6 of your request. This has now been corrected in the attached report. We offer our apologies for this error.

Please note, your statement that the response was defective because we omitted SAR performance figures beyond 40 days in answer to question 4 is incorrect. Your original request only asked for this information up to the 40 days. You were therefore provided with the information within the scope of your request.

I can confirm that the exemptions applied to the SAR training and guidance information provided in response to questions 7 and 8 of your request were applied correctly.

Yours sincerely

M Riddle

Information Access Team

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E-mail FOIRequests@homeoffice.gsi.gov.uk

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Clive Waterman (reference 33552)

Responding Unit: Knowledge and Information Management Unit (KIMU)

Chronology

Original Fol request: 18 November 2014

KIMU response: 29 January 2015

Request for internal review: 29 January 2015

Subject of request

1. On 18 November 2014, Mr Waterman submitted a Freedom of Information (FOI) request seeking information relating to subject access requests (SARs). The request consisted of 8 questions effectively broken down into two parts. The first part concerned statistics on SARs received by the department, the second concerned the departments SAR training and guidance. The full request can be found in Annex A.

The response by KIMU

2. Mr Waterman was informed that the Home Office holds information within the scope of the request. The statistical information sought for questions 1 to 6 was provided in full. The information concerning the SAR training and guidance was only partially released. Elements of this guidance were withheld under sections 31(1)(e), 36(2)(c), 40(2) and 42(1).

Request for an internal review

3. Mr Waterman has asked for an internal review. He has two issues he would like resolved.
 - The first is that he believes some of the statistical information is incomplete. He argues that '*some responses have not been issued within 40 days*' and that this information has been omitted.
 - The second is that he does not believe the exemptions cited are warranted and that he would like them reviewed.

Procedural issues

4. The request was received on 18 November 2014 and a response was issued on 29 January 2015. This represents a period of 49 working days between receipt of the request and the response being issued. This means that the response was outside the target deadline of 20 working days as specified in section 10(1) of the Act.
5. The 20 working day deadline is extendable by virtue of section 10(3) of the Act. Given that the response was issued outside the time limit of 20 working days, a public interest test (PIT) extension would be required to legally extend the deadline.
6. As information was ultimately exempted for disclosure under the public interest test exemptions of 31, 36 and 42 of the Act. The deadline could have been extended under a PIT extension. However no PIT extension was engaged.

7. Mr Waterman was informed in writing of the right to request an independent internal review of the handling of the request, as required by section 17(7)(a) of the Act. The response also informed Mr Waterman of the right of complaint to the Information Commissioner, as set out in 17(7)(b) of the Act.

Consideration of the response

8. Mr Waterman has argued that the statistical information he requested is incomplete because some responses were not responded to within the 40 day target and that these figures have been omitted.
9. Mr Waterman is correct the figures outside of 40 days have not been provided. However this is because they were not in scope of the original request. Mr Waterman's request stated *"Please provide a breakdown of how long applications took to process. 1 day. 2 day.... 40 days."*, the original request does not seek the information beyond the 40 working day deadline. It was therefore not in scope. The department therefore complied with the request. Should Mr Waterman wish to gain access to this information he should submit a revised request and the Home Office will consider it again in line with the Act.
10. Upon review it has also come to light that some of the information provided to Mr Waterman in his response was incorrect. In particular, the UKVI response to question 6. Mr Waterman was provided with this information:

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
25/02/14 – 24/05/14	6
25/05/14 – 24/08/14	89
25/08/14 – 24/11/14	69

The correct information that should have been provided is as follows:

Date received	No outstanding
Oct 2013 to Dec 2013	1
Jan 2014 to Mar 2014	3
Apr 2014 to Jun 2014	20
Jul 2014 to Sep 2014	143

11. This review will correct this mistake and provide Mr Waterman with the corrected date ranges. The date ranges should have reflected the period in the original request, ie October 2013 to September 2014. An apology will also be offered to Mr Waterman for the error.
12. Mr Waterman also objected to the redactions made against the SAR training and guidance material that was released in relation to questions 7 and 8 of his request. Having reviewed the exemptions applied under 31(1)(e), 36(2)(c), 40(2) and section 42(1), I can confirm that they were correctly applied and that the redactions were necessary. In each case the required public interest test was carried out and the balance found to be weighted to withholding the information requested.

13. I can also confirm that the redactions were consistent with previous responses requesting this material. One of which can be found on the Whatdotheyknow.com website at this link:
- https://www.whatdotheyknow.com/request/policy_and_procedure_for_subject.

Conclusion

14. No information was omitted, the requested information in scope was considered and where possible provided in full.
15. The Home Office provided Mr Waterman with some incorrect statistics, this has now been rectified and the correct statistical information provided.
16. Sections 31(1)(e), 36(2)(c), 40(2) and section 42(1), were correctly engaged and the balance of the public interest lies in maintaining the exemption in each case.
17. I am satisfied there was no procedural breach of section 17(7)(a) and 17(7)(b).

Information Access Team
Home Office
23/2/2015

Annex A- Original request

Dear Home Office,

Please can you provide information relating to subject access requests (sar).

1. How many did the home office receive in the twelve months (oct 2013 - sept 2014)
2. How many were processed within the legal time limit
3. How many were not processed within the legal deadline.
4. Please provide a breakdown of how long applications took to process. 1 day. 2 day.... 40 days.
5. Noting that legally all of the applications from the period above should of been concluded by now. How many remain unanswered.
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.
7. Please provide internal sar training material.
8. Please provide internal sar guidance material.

Yours faithfully,

Annex B – Response in full

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

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

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%)

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.

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

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.

Annex C – Internal Review request

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 'SAR Response times'.

You have made it clear that some responses have not been issued within 40 days. Therefore. Why have you omitted these from the responses by day release. Please correct this.

I do not agree with your exemptions. Please release all parts of the guidance. Should any information truly be redacted. I expect a clear indication of what had been redacted and only the specific words which fall to be redacted to be redacted.

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

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