

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by C Gillstrap (reference 12439)

**Responding Unit: UK Border Agency (UKBA)**

**Chronology**

Original Fol request:	14 July 2009
Acknowledgement:	20 July 2009
UKBA response:	11 August 2009
Resubmitted Application:	11 August 2009
Further UKBA response	23 September 2009
Request for Internal Review	24 September 2009
Complaint to the ICO	26 November 2009

**Subject of request**

1. The request was in the form of ten questions, which are set out in the attached **Annex A**.
2. Mr Gillstrap requested information in relation to EEA2 applications. In particular he asked for statistics as to the number of applications which have been decided within the terms of the service level agreement, minutes from various meetings and other related documents.
3. The requester asked for a copy of the UKBA 'complaints manual'.

**The response by UKBA, North West region**

4. The response from the UKBA is attached as **Annex B**. The response can be broken down into three distinct sections:
  - In response to questions 1, 2, 3, 4, 5, 6 and 10 the UKBA refused to provide the information to Mr Gillstrap and cited an exemption under section 12 of the Freedom of Information Act.
  - In answer to questions 7 and 9 the UKBA stated that they did not hold the information.
  - In reply to question 8 the requester was provided with the web address of the UKBA website and directed towards the Customer Charter.
5. Within the response UKBA offered to reconsider the request if Mr Gillstrap refined his request.

### **Mr Gillstrap's second request for information**

6. Mr Gillstrap clarified his request in an e-mail, attached at **Annex C**, on 11 August which stated that:
  - He withdrew points 3, 4 and 6 of his original request.
  - In regard to questions 1, 2, 5 and 10 he reiterated his request for statistical information and disputed that it would exceed the cost limit of £600 to provide this information.
  - He again requested a copy of the UKBA 'complaints manual'.
  - He acknowledged that the UKBA did not have the information that he requested in question 9.
7. No mention is made in Mr Gillstrap's e-mail of UKBA's response to his seventh question.

### **Further UKBA letter to Mr Gillstrap**

8. In response to Mr Gillstrap's e-mail of 11 August UKBA wrote a further letter to him on 23 September. Following the clarifications and refinements made by the requester the UKBA was able to provide him with the statistics he asked for in relation to questions 1, 2 and 10 of his request.
9. In response to Mr Gillstrap's fifth question UKBA stated that they did not hold the information and even if they did they would have exempted disclosure by virtue of an exemption under section 40 of the FoI Act.
10. Mr Gillstrap was not provided with a copy of the 'complaint's manual' as it had been withdrawn and was in the process of being redrafted.

### **Mr Gillstrap's Request for an Internal Review**

11. Mr Gillstrap asked for an internal review of the UKBA response in an e-mail of 24 September. The request for an internal review confines itself to the issue of the 'complaint's manual' and asks for the non-release of this document to be reviewed.

### **Procedural issues**

12. Mr Gillstrap's original request of 14 July, sent by e-mail to the Freedom of Information Team, was acknowledged by e-mail on 20 July. UKBA's reply of 11 of August complied with the time limit imposed by section 10(1) of the FoI Act.

13. The second request of 11 August 2009 was sent by e-mail, again, to the Freedom of Information Team. On 10 September Mr Gillstrap was sent a further copy of the letter of 11 August. The UKBA sent a reply to Mr Gillstrap's second request on 23 September; this was 30 days after receipt of the request. This was in excess of the 20 day working limit imposed by section 10(1) of the FoI Act.

### **Consideration of the responses**

14. I have considered the original UKBA response to Mr Gillstrap's request and the additional information provided in the UKBA letter of 23 September 2009.

#### Question 1

15. Mr Gillstrap requested statistics on the number of EEA2 applications decided within the stipulated service level. UKBA confirmed that they held the requested information but refused to disclose the information relying on an exemption under section 12 of the FoI Act. I am satisfied UKBA correctly invoked section 12 of the FoI Act when considering Mr Gillstrap's whole request. Mr Gillstrap refined his request on 11 August and the information was provided by UKBA in their response of 23 September.

#### Question 2

16. Mr Gillstrap requested statistics on the number of EEA2 applications decided outside of the stipulated service level. UKBA confirmed that they held the requested information but refused to disclose the information relying on an exemption under section 12 of the FoI Act. I am satisfied UKBA correctly invoked section 12 of the FoI Act when considering Mr Gillstrap's whole request. Mr Gillstrap refined his request on 11 August and the information was provided by UKBA in their response of 23 September.

#### Question 3

17. Mr Gillstrap requested notes, minutes, e-mails and other such information in relation to changing policy for publishing processing times for EEA2 applications. UKBA confirmed that they held the requested information but refused to disclose the information relying on an exemption under section 12 of the FoI Act. I am satisfied UKBA correctly invoked section 12 of the FoI Act when considering Mr Gillstrap's whole request. The question was withdrawn by the requester in his e-mail of 11 August.

#### Question 4

18. Mr Gillstrap requested notes, minutes, e-mails and other such information in relation to UKBA's plan to achieve acceptable service

levels for EEA2 applications. UKBA confirmed that they held the requested information but refused to disclose the information relying on an exemption under section 12 of the FoI Act. I am satisfied UKBA correctly invoked section 12 of the FoI Act when considering Mr Gillstrap's whole request. This question was withdrawn by the requester in his e-mail of 11 August.

19. UKBA provided a short response to this question in their letter of 23 September.

#### Question 5

20. Mr Gillstrap requested the number of cases and details where UKBA has been exposed to damages where they have been negligent in applying the Immigration (European Economic Area) Regulations 2006. In their response of 11 August UKBA stated that they held the requested information but refused to disclose the information relying on an exemption under section 12 of the FoI Act.
21. Mr Gillstrap reiterated this part of his request in his e-mail of 11 August 2009. The UKBA letter of 23 September stated that UKBA does not hold the information requested. The responder's letter of 23 September stated that if the information was held the information would have been exempt from disclosure under section 40(3) of the FoI Act.
22. The responder incorrectly stated in their reply of 11 August that they held the information requested. UKBA should have stated in their original response that this information was not held. As it had been established that the information is not held a hypothetical exemption under section 40 was not required under the FoI Act.

#### Question 6

23. Mr Gillstrap requested notes, minutes, e-mails and other such information in relation to the permitting of applicants to have their identity documents returned to them. UKBA confirmed that they held the requested information but refused to disclose the information relying on an exemption under section 12 of the FoI Act. I am satisfied UKBA correctly invoked section 12 of the FoI Act when considering Mr Gillstrap's whole request. This question was withdrawn by the requester in his e-mail of 11 August.

#### Question 7

24. In response to this question the UKBA stated in their letter of 11 August that they did not hold this information. Mr Gillstrap did not ask for a review of this response in his e-mail of 11 August.

### Question 8

25. Mr Gillstrap requested a copy of the complaints manual. UKBA's letter of 11 August pointed Mr Gillstrap in the direction of the Customer Charter, on the UKBA website. This was not the information that he had requested. Moreover, the response failed to say whether or not the information was held and failed to give a reason why, if it was held, the information was not provided. In this respect the response of 11 August was in breach of section 1(1) of the FoI Act.
26. In the second response of 23 September UKBA stated that they were unable to supply a copy of the 'complaints manual' as it had been withdrawn for redrafting.
27. The document titled Complaint's Management Guidance was re-issued on 05 November 2009. This document is the UKBA guide when processing the handling, management and resolution of complaints. The document will be released with this review with four redactions.
28. The redactions on page one and in Annex A section 2 are made under section 40(3)(a)(i) of the FoI Act. The information redacted is personal information, the names of members of staff. I am satisfied that to release this information would not be fair or lawful and would constitute a breach of the Data Protection Principles which are set out in Part I of Schedule 1 to the Data Protection Act.
29. The segment redacted on page 9 of the Complaints Management Guidance is exempted from disclosure under section 31(1)(e) of the FoI Act as disclosure would be prejudicial to immigration controls. The redacted information is Command and Control Unit's telephone number. The number is a dedicated line for the police and other stakeholders who may require emergency checks. To disclose this number would negatively impact on the service provided by the Command and Control Unit and, consequently, prejudice the operation of immigration control.

### Question 9

30. In response to this question the UKBA stated, in their letter of 11 August, that they did not hold this information. The requester accepted this reply in his e-mail of 11 August and has not requested an internal review of this response from the UKBA.

### Question 10

31. Mr Gillstrap requested statistics on the number applications that have been escalated to an UK or European Member of Parliament. UKBA confirmed that they held the requested information but refused to disclose the information relying on an exemption under section 12 of the FoI Act. I am satisfied UKBA correctly invoked section 12 of the FoI

Act when considering Mr Gillstrap's whole request. Mr Gillstrap refined his request on 11 August. The responder was unable to answer the question directly but was able to give a total number of MP's correspondence received in the previous year.

### **Advice and assistance**

32. In their original response of 11 August the UKBA offered to reconsider Mr Gillstrap's request information if he refined his request. Specifically, if he was to limit his request to statistical information for a particular year.

### **Conclusion**

33. The first UKBA response of 11 August to Mr Gillstrap was provided within the 20-working day limit and complied with section 10(1) of the Fol Act.
34. The second UKBA response of 23 September was provided to Mr Gillstrap outside the 20-working day limit, albeit not excessively so, and so was in breach of section 10(1) of the Fol act.
35. The UKBA response of 11 August correctly exempted the release of information in relation to question 1, 2, 3, 4, 6 and 10 under section 12 of the Fol Act.
36. The UKBA response of 11 August incorrectly exempted the release of information in relation to question 5. The response ought to have stated that the information was not held.
37. The response of 11 August rightly stated that the UKBA did not hold the information requested in questions 7 and 9.
38. The response of 11 August failed to say, in respect of the information requested by Mr Gillstrap in question 8, whether the information was held or not. In this respect the response of 11 August was in breach of section 1(1)(a) of the Fol Act and in so far as this information was in fact held, section 1(1)(b). The requested information has been provided in a redacted form with this review.
39. The UKBA response of 23 September provided proper responses to all of Mr Gillstrap's refined questions, apart from question 8.

**Home Office**  
**15-Feb-10**