



Home Office

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Jack Maxwell
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22 June 2021

Dear Mr Maxwell

Freedom of information request (our ref. 61422: internal review)

Thank you for your email of 14 January 2021, in which you asked for an internal review of the response to your Freedom of Information (FOI) request. Your request of 27 November 2020 asked for information regarding the triage process operated by the Home Office to manage marriage notifications. A full copy of your request can be found in **Annex A**.

I apologise for the delay in responding to your request. The Home Office aims to reply to requests for an internal review within 20 working days, or exceptionally 40 working days. Unfortunately, this is not always possible. I am sorry for the delay in your case.

I have now completed the review and assessed the substance of the response provided to you. I can confirm that I was not involved in the initial handling of your request.

A full copy of the response can be found in **Annex B**.

The review is based on the points you have raised in your internal review request which can be found in full at **Annex C**.

The crux of your argument is that you wish us to review the decision to withhold some of the requested information under section 31 and section 40 of the FOI Act. You also asked us to review whether the Home Office disclosed its full analysis of the impact of the triage model on different nationalities.

I have carefully considered your comments and have discussed the points you have raised with the responding unit.

I am satisfied that section 31(1)(a) is engaged to withhold the criteria that the triage model uses in the EIA. Whilst I accept there is a specific public interest in enabling access to information about immigration enforcement activity and information gathered to inform operations, the balance of public interest falls in favour of maintaining the exemption. Although some information is available, to release the further information would prejudice our ability to detect and deter sham marriages. It is in the public interest to ensure that the Home Office is able to successfully detect and deter sham marriages. Publication of the criteria used to determine which couples require their notice period to be extended would be likely to prejudice the Home Office's ability to do this. Through this process the Home Office is also able to detect and safeguard vulnerable individuals who may have been forced to take part in the sham marriage. Prejudicing the Home Office's ability to detect and protect these vulnerable individuals would not be in the public interest.

In reference to your third point whether the Home Office disclosed its full analysis of the impact of the triage model on different nationalities, I confirm that the Home Office does not hold any further information in relation to this particular point.

I have discussed the content of the MRAU guidance document with the responding unit and can confirm that some of the information that was originally withheld under section 40(2) does not constitute personal information. This information can be disclosed and a revised version of the MRAU document is attached with the review response.

Section 40(2) has been engaged correctly to withhold only the personal information within the revised MRAU guidance document because of the condition at section 40(3A)(a) where this concerns the personal data of third parties. The Home Office has obligations under data protection legislation and in law generally to protect personal data. This exempts personal data from release if disclosure would contravene any of the data protection principles in Article 5(1) of the UK General Data Protection Regulation and section 34(1) of the Data Protection Act 2018. We believe releasing the report would breach the first data protection principle, since it would be unlawful and unfair to disclose the information.

My conclusion is that section 31(1)(a) is engaged to withhold the criteria that the triage model uses in the EIA. Section 40(2) is also engaged to withhold only the personal information contained within the revised MRAU guidance document.

I am sorry if this is disappointing, but I hope the explanation above has helped explain the reason for the response in this case.

This completes the internal review by the Home Office.

Yours sincerely

J Conquest
Information Rights Team

Annex A – Original request dated 27 November 2020

Dear Home Office,

The Independent Chief Inspector's report of December 2016 noted that the Marriage Referral Assessment Unit (MRAU) used a 'trial model', known as 'the dial', to decide which marriage referrals to investigate as potential shams - see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577880/Sham_Marriage_report.pdf

Please provide the following information:

- (1) Does the MRAU still use a triage model or similar system to decide which marriage referrals should be investigated as potential shams?
- (2) Does the model use nationality as a factor in assessing marriage referrals? If so, please provide a copy of the relevant Ministerial authorisation for the purposes of the Equality Act.
- (3) Please provide copies of any equality impact assessments or data protection impact assessments completed in relation to the model.
- (4) Please provide copies of any internal policies, guidance or standard operating procedures which deal with the process of handling marriage referrals and the use of the model.

In the event that you determine some of the information I have requested to be exempt from disclosure, please redact exempt information with black boxes, instead of snipping or excerpting, and please state which category of exemption you believe applies to the information.

If it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in s.12 FOIA, please provide advice and assistance as to how I can refine my request, as required under s.16 FOIA.

Yours faithfully,

Jack Maxwell

Annex B – Original Response dated 17 December 2020

Dear Mr Maxwell,

Re: Freedom of Information request – 61422

Thank you for your email of 27 November, in which you ask for information regarding the triage process operated by the Home Office to manage marriage notifications. Your request, which is set out in the attached Annex A, has been handled as a request for information under the Freedom of Information Act 2000 (FOIA).

The Marriage Referral Assessment Unit (MRAU) does use a triage model. The model does not use Nationality as a factor, or criteria, to assess the notifications. It does not use any protected characteristics as defined by the Equality Act 2010 to directly discriminate against couples giving notice to marry.

In keeping with the FOIA, we assume that all information can be released to the public unless it is exempt. I can confirm that the Home office does have an Equality Impact Assessment (EIA) for the marriage assessment process. However, after careful consideration we have decided that some of the information is exempt from disclosure under section 31(1)(a) of the FOIA. This provides that information can be withheld where disclosure would or would be likely to prejudice the prevention or detection of crime. Arguments for and against disclosure in terms of the public interest with the reasons for our conclusion, are set out in the attached Annex B. In light of this we have released the EIA but have redacted the section that describes the criteria the triage model uses; please refer to annexes C and D.

The Home Office has guidance that deals with the handling of marriage referrals and the use of the model. In line with section 40(3)(a)(i) of the Freedom of Information Act which provides an exemption under data protection principles we have redacted the sections that relate to personal information.

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.gov.uk, quoting reference 61422. 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,

Immigration Enforcement Secretariat.

Annex to the response letter

Public Interest Test in relation to s31(1)(a):

31(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 – (a) the prevention or detection of crime

Some of the exemptions in the FOIA, 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 maintaining the exemption. 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 necessarily 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,

Considerations in favour of disclosing the information

There is a general public interest in the disclosure of information to ensure departmental transparency and accountability. There is also a general public interest in providing information to enable the public to understand decisions which may affect them. There is a specific public interest in enabling access to information about immigration enforcement activity and information we gather to inform operations. We recognise that there may be a public interest in disclosing this information now and that this may weigh in favour of it being unreasonable to wait for the information to be published.

Considerations in favour of maintaining the exemption

It is in the public interest to ensure that the publication of official information is a properly assessed and sources are protected. The Home Office must ensure that the information intended for publication meets the standards and requirements set for departmental publications. It would not be in the public interest for the Home Office to release this information.

Conclusion

We conclude that the balance of the public interest lies in maintaining the exemption and withholding the information. It is in the overall public interest that the Home Office is able to identify and investigate marriages that present a high risk of being sham marriages.

Annex C – Internal Review request dated 14 January 2021

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 the Home Office's handling of my FOI request 'Sham marriages'.

In its response to my request, the Home Office redacted two categories of information:

- (1) The criteria used by the triage model, which are set out in the Equality Impact Assessment (EIA), which the Home Office says is exempt under s 31(1)(a) of the Freedom of Information Act 2000 (FOIA), on the ground of prejudice to the prevention or detection of crime.
- (2) Information in the MRAU Guidance, which the Home Office says is personal information and thus exempt under s 40(3)(a)(i) FOIA (I assume this is in fact a reference to s 40(3A)(a), as s 40(3) no longer exists).

I am seeking internal review of both of these redactions.

I am also seeking internal review of:

- (3) The Home Office's failure to disclose its full analysis of the impact of the triage model on different nationalities.

I set out the grounds for my request for internal review below.

(1) Criteria used by the triage model

The Home Office set out its rationale for exempting this information in Annex B to its response. Annex B simply states that '[i]t is in the public interest to ensure that the publication of official information is a properly assessed and sources are protected. The Home Office must ensure that the information intended for publication meets the standards and requirements set for departmental publications. It would not be in the public interest for the Home Office to release this information'. Annex B does not identify the claimed prejudice to the prevention or detection of crime, nor the causal link between the disclosure and the harm claim, nor the likelihood of this harm actually occurring. The response is clearly defective.

More generally, it is not credible to claim that the disclosure of the criteria used by the triage model would prejudice the prevention or detection of sham marriages. First, the Home Office could disclose the criteria without disclosing the weights assigned to them by the triage model. This disclosure would not enable people to circumvent the model's operation. Second, to the extent that the model's criteria focus on static information about people (i.e. features about people which they cannot modify, either at all or in any cost-effective or efficient way), disclosure of those criteria would not enable people to circumvent the model's operation. Third and in any case, the Home Office has disclosed some of the criteria in the remainder of the EIA (e.g. pages 6 and 7 discuss how the model uses couple behaviour, shared travel events and age difference in assessing risk). Given that the Home Office could disclose these criteria without prejudicing the prevention or detection of crime, it is not apparent why the disclosure of the remaining criteria would create a risk of harm engaging s 31(1)(a) FOIA.

In light of the above, I request internal review of the Home Office's failure to disclose the criteria used by the triage model, as covered by my original request.

(2) Information in the MRAU Guidance

The Home Office has redacted large parts of the MRAU Guidance, particularly the flowcharts setting out various internal processes. It is unclear why all of this information falls within the scope of s 40(3A)(a). If these flowcharts contain the names of Home Office officials, then it makes sense to redact them. But other text (e.g. position titles, descriptions of actions to be done by certain officials) is very unlikely to be personal data within the meaning of the GDPR, because it could not be used to identify a natural person.

I request a review of the redactions to the MRAU Guidance to ensure that only personal data has been redacted.

(3) Failure of the Home Office to disclose its full analysis of the impact of the triage model on different nationalities

My request sought 'any equality impact assessments' completed in relation to the model. The Home Office provided its formal EIA dated 30 November 2020 in response. But the EIA indicates that the Home Office has conducted further and more detailed analysis of the equality impacts of the model. Page 9 states that '[a] review of the nationalities involved has been conducted', and page 10 includes an incompletely labelled graph of the impacts of the model on different nationalities.

In light of this, I request a review of the Home Office's failure to disclose all of its assessments of the equality impacts of the model, as originally requested.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://gbr01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whatdotheyknow.com%2Frequest%2Fsham_marriages_8&data=04%7C01%7CJanette.Conquest%40homeoffice.gov.uk%7Cfbffe7d16faa416fad5408d8bd5a0739%7Cf24d93ecb2914192a08af182245945c2%7C0%7C0%7C637467541644638380%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=UdhxhwojWbe5M5o%2F%2BBKHVWXb%2BZ6AxB5vXY1tdVCLjPc%3D&reserved=0

I look forward to your response.

Yours faithfully,

Jack Maxwell

Annex D – Complaints Procedure

If you remain dissatisfied with the response to your FoI 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

<https://ico.org.uk/make-a-complaint/>