

**Detention Services**

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Mr Wyllie

**Web** [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

By email

25 March 2011

Ref: FOI 17948

Dear Mr Wyllie,

Thank you for your on email of 2 March 2011 regarding copies of documents relating to Short term Holding Facilities created since 15 June 2010. This follows on from your previous request for this information created since 3 August 2009. You have asked for the following:

1. 'A copy of the internal memoranda about Independent monitoring Boards for Short Term Holding Facilities.'
2. 'Information (including documents, minutes, memoranda, proposed orders and regulations, etc. concerning proposed Short Term Holding Facilities Rules (or regulations).'

With regard to part 1 of your request, please find attached the Memorandum of Understanding and Service Level Agreement between the UK Border Agency's Detention Services and The National Council of Independent Monitoring Boards for the UK Border Agency's Detention Estate.

However, for part 2 of your request I have again carefully considered your request for information concerning proposed Short Term Holding Facilities Rules (or regulations) and I have again decided not to communicate this information to you pursuant to the exemptions under section 35(1) (a) and Section 42(1) of the Freedom of Information Act.

Section 35(1) (a)

Section 35 (1) (a) provides exemption for information relating to the formulation or development of Government policy. Some of the information that you have requested falls within the scope of this exemption.

The use of this exemption requires us to consider whether in all the circumstances of the case the public interest in maintaining the exemption stated above outweighs the public interest in disclosing the information. There are public interest considerations for disclosing policy considerations in order to increase transparency of government decision making and provide greater accountability. Disclosure may also promote understanding of how the rules on this matter are formulated and the rationale behind them.

However, in this instance there are also specific considerations in favour of maintaining the exemption in order to protect the formulation process. Good government depends on good decision making and this needs to be based on the best advice available and on full consideration of all the options. The advice obtained during the formulation of these rules is broad ranged and disclosure may be a deterrent on those providing their views and advice if it might be disclosed. In addition, Ministers and officials need to be free to conduct rigorous and candid assessments of their policies and programmes including the advantages and disadvantages of any available options. The disclosure of documents revealing such assessments might undermine the frank exchange of departmental views and therefore undermine collective decision making.

We have considered whether in all the circumstances the public interest in maintaining the exemption under section 35 outweighs the public interest in disclosing all the information you have requested. We have concluded that the balance of the public interests identified lies in favour of maintaining the exemption under section 35 as there is a greater overall public interest in ensuring that officials and Ministers have the space to develop policy and consider all possible options.

#### Section 42(1)

It is also the case that some of the information requested falls within the scope of section 42 of the Act (Legal Professional Privilege). An important part in the formulation of policy involves obtaining legal advice and many of the documents on file are concerned with such advice. Section 42 (1) allows public authorities to exempt information if a claim to legal professional privilege could be maintained in legal proceedings.

As with our consideration under exemptions under Section 35 (1) (a) of the Act we have taken account of the public interest in ensuring transparency in government decisions and a public interest in understanding how such decisions are reached. However, there are strong public interest considerations in favour of protecting legal advice. There is a strong public interest in a person seeking access to legal advice being able to communicate freely with his legal advisers in confidence and in being able to receive advice from legal advisers in confidence. The underlying rationale for having a strong rule against disclosure is that it encourages full and frank exchanges between clients and their legal advisers, which is judicially recognised as being something strongly in the public interest for a variety of reasons. It is therefore considered that the public interest in maintaining the exemption under section 42 in this case outweighs the public interest in disclosing the information.

It may be that your request for this information is as a consequence of the STHF Rules not yet being laid before Parliament. I should explain that the reason for this relates to issues surrounding the Agency having inherited custody suites from Her Majesty's Revenue and Customs and, more recently, the proposed setting up of Pre-Departure Accommodation for families with children, which will operate within the overall framework of the Rules. These developments have implications for the content of the Rules and the issues surrounding them have yet to be resolved. I am sorry I am not able to provide a timescale for the resolution of the outstanding issues at this stage.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request. Internal review request should be submitted within two months of the UK Border Agency sending a substantive reply to your original request and should be addressed to:

Information Access Team  
Home Office  
Ground Floor, Seacole Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [info.access@homeoffice.gsi.gov.uk](mailto:info.access@homeoffice.gsi.gov.uk)

During the independent review the department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

Patricia O'Brien  
Criminality and Detention Group  
UK Border Agency