



Home Office

International and Immigration 0207 035 4848
Policy Group (switchboard)
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2 Marsham Street
London
SW1P 4DF

Mrs Amin

By email: request-204181-587f3ddb@whatdotheyknow.com

29 April 2014

Dear Mrs Amin,

FOI Request 31249

Thank you for your email of 28 March, your request has been handled as a request for information under the Freedom of Information Act 2000.

In your email you request the following information: “any internal documentation / notes regarding the recent ruling by the EU Court of Justice case C-456/12 dated 12 March 2014. Particularly on how they would effect Surinder Singh cases especially regarding an EEA2 Application and an EU Family Permit and recent amendments to regulation 9”.

I can confirm that the Home Office holds information that you have requested. However, after careful consideration we have decided that the information is exempt from disclosure under sections 21, 22(1) and 42 of the Freedom of Information Act. These sections provide, respectively, that information can be withheld; where the information is already reasonably accessible to the applicant, where the information is intended for future publication and the public interest falls in favour of applying the exemption, and in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion, are set out in Annex A of this response.

If you are dissatisfied with the response to the sections of your email which have been handled as requests for information under the Freedom of Information Act 2000 you may request an independent internal review of our handling by submitting a complaint within two months to the address below, quoting reference 31249. 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
Ground Floor, Seacole Building
2 Marsham Street
London

SW1P 4DF

Email: info.access@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of the sections of your information request which have been handled under the Freedom of Information Act 2000 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,

D Morrison
International and Immigration Policy Group

Annex: Freedom of Information request from Mrs Amin (reference 31249)

Information requested

“Could you provide any internal documentation / notes regarding the recent ruling by the EU Court of Justice case C-456/12 dated 12 March 2014? Particularly on how they would effect Surinder Singh cases especially regarding an EEA2 Application and an EU Family Permit and recent amendments to regulation 9.”

Response

The information is exempt from disclosure under sections, 21, 22(1) and 42 of the FOI Act.

Section 21 provides that information which is reasonably accessible to the applicant by other means is exempt information.

Section 22(1) provides that information can be withheld where the information is intended for future publication and the public interest falls in favour of applying the exemption.

Section 42 provides that information that would be subject to legal professional privilege, if litigation were in process, is exempt from disclosure if the public interest falls in favour of applying the exemption. Legal professional privilege (LPP) is a rule of litigation that protects, in general terms, confidential communications between lawyers and their clients. Section 42 applies to information in respect of which a claim to LPP could be maintained in legal proceedings.

Public interest test

Sections 22(1) and 42 are referred to as ‘qualified exemptions’, and are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information, or the considerations for and against the requirement to say whether the information requested is held or not. 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 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. 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, including those who might represent a threat to the UK.

Considerations in favour of disclosing the information

The Court of Justice of the European Union (CJEU) issued the judgment in case C-456/12 on 12 March 2014, along with a press release summarising the judgment. Disclosure of the information would be in the public interest in that it would provide the public with an understanding of the UK Government’s reaction to the judgment in case C-456/12 and the impact of the judgment on applicants.

Considerations in favour withholding the information

In respect of section 22(1) - the Home Office intends to publish both a summary of the judgment in case C-456/12 and information on the application of the judgment, including in respect of Surinder

Singh cases, EEA 2 applications and applications for EEA Family Permits. Publication of the collated information will provide the public with a single, authoritative, point of reference which will set out the Home Office's reaction to the judgment in case C-456/12 and its application to individual cases. The requestor will be able to access this information within a reasonable timescale and it will be sent directly to Mrs Amin.

In respect of section 42 – the disclosure of legal advice has a high potential to prejudice the Home Office's ability to make fully informed and effective decisions and could result in poorer decision making as decisions are either not taken on a fully informed basis, or legal advice is not sought. Legal professional privilege is also a long standing principle that serves an important role in the administration of justice.

I have considered whether in all circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. I have concluded that the balance of the public interest identified lies in favour of maintaining the exemption.