



Home Office

Border, Immigration and  
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Sukwant Singh

[request-393112-626328c5@whatdotheyknow.com](mailto:request-393112-626328c5@whatdotheyknow.com)

FOI Reference: 43087

Date: 28 April 2017

Dear Mr Singh

Thank you for your e-mail of 2 March 2017, in which you ask for:

- all guidance relating to regulation 9 of the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations');
- all guidance relating to transitional protections for cases falling under the Immigration (European Economic Area) Regulations 2006 ('the 2006 Regulations');
- all information stored by way of PIN, memos, etc. relating to the 2016 Regulations.

Your request has been handled as a request for information under the Freedom of Information Act 2000. I apologise for not responding to your request within 20 working days.

I can confirm that the Home Office holds the information that you have requested, although we do not issue process information notices (PIN) or memos.

Section 21 of the Freedom of Information Act exempts the Home Office from having to provide you with some of the information you have requested, because it is already reasonably accessible to you. Published guidance relating to regulation 9 (family members of British citizens), transitional protections for cases falling under the 2006 Regulations and the 2016 Regulations are as follows:

- Free movement rights: direct family members of EEA nationals issued on 25 November 2016
- EEA nationals qualified persons issued on 1 February 2017
- Excluding EEA nationals and their families from the UK issued on 1 February 2017
- Misuse of rights and verification of EEA rights of residence issued on 1 February 2017
- Removals and revocations of EEA nationals issued on 1 February 2017

- EEA and Swiss nationals: free movement rights issued on 2 February 2017
- EEA decisions taken on grounds of public policy issued on 2 February 2017
- Free movement rights: retained rights of residence issued on 7 February 2017
- Processes and procedures for EEA documentation applications issued on 14 February 2017
- EEA family permits: guidance for entry clearance officers issued on 13 March 2017
- EEA case law and appeals issued on 27 March 2017
- Free movement rights: family members of British citizens issued on 4 April 2017
- Derivative rights of residence issued on 11 April 2017
- Extended family members of EEA nationals issued on 11 April 2017

The guidance listed above can be found on GOV.UK at:

[www.gov.uk/government/collections/eea-swiss-nationals-and-ec-association-agreements-modernised-guidance](http://www.gov.uk/government/collections/eea-swiss-nationals-and-ec-association-agreements-modernised-guidance).

Your request for 'all information stored by way of PIN, memos, etc. relating to the new 2016 Regulations' has been treated as a request for all information relating to guidance and information provided to Home Office staff about the implementation of the 2016 Regulations. This information and guidance are set out in the enclosed Annexes 1-13, listed below for ease of reference.

- Annex 1: Operational Policy Instruction 678 issued to UK Visas & Immigration International staff on 21 November 2016
- Annex 2: Operational Policy Instruction 679 issued to UK Visas & Immigration International staff on 21 November 2016
- Annex 3: Interim Operational Instruction 98-16 issued to Border Force staff on 24 November 2016
- Annex 4: Interim Operational Instruction 04-17 issued to Border Force staff on 1 February 2017
- Annex 5: Migrant Criminality Policy Operational Notice dated 1 February 2017
- Annex 6: 'ICE Cast' email issued to Immigration Enforcement staff on 1 February 2017
- Annex 7: Criminal Casework email update dated 1 February 2017
- Annex 8: EEA nationals refusal of admission, version 3, issued to Border Force staff on 16 February 2017
- Annex 9: Operational Policy Instruction 696 issued to UK Visas & Immigration International staff on 20 February 2017
- Annex 10: Communication to Immigration Enforcement staff on 22 February 2017
- Annex 11: Migrant Criminality Policy – Operational Notice on 'which apply – the EEA Regulations 2006 or the EEA Regulations 2016?' dated 28 February 2017 and issued to Criminal Casework staff on 3 March 2017
- Annex 12: 'ICE Cast' email issued to Immigration Enforcement staff on 1 March 2017 (item 3: Implementation of the Immigration (EEA) Regulations 2016 – Deportation on public policy grounds in cases of sham and fraud)
- Annex 13: EEA nationals and family members, version 4, issued to Border Force staff on 14 March 2017

I have removed contact details (email addresses and telephone numbers) from the annexes under section 36 of the Freedom of Information Act. This exempts information if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs and the public interest falls in favour of non-disclosure. Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion, are set out in Annex A.

The Home Office has obligations under the Data Protection Act 1998 and in law generally to protect personal data. I have removed from the annexes any names of Home Office officials below senior civil service because they are exempt from disclosure under section 40(2) of the Freedom of Information Act, because of the condition at section 40(3)(a)(i). This exempts personal data if disclosure would contravene any of the data protection principles in Schedule 1 to the Data Protection Act.

I have also removed hyperlinks to our staff intranet pages since they are not accessible outside of the Home Office and are not considered to be within the scope of your request.

Annexes 8 and 13 are extracts from guidance for Border Force staff. This guidance states on numerous pages, 'All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office'. This is because Border Force guidance is not published on GOV.UK due to operational sensitivities. Where possible, we have released the contents of Annexes 8 and 13.

However, after careful consideration we have decided that some information in Annexes 8 and 13 is exempt from disclosure under section 31(1)(e) of the Freedom of Information Act. This provides that information can be withheld where disclosure would or would be likely to prejudice the operation of the immigration controls and the public interest falls in favour of non-disclosure. Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion, are set out in Annex B.

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 43087. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Rights Team  
Home Office  
Fourth Floor, Peel Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [foirequests@homeoffice.gsi.gov.uk](mailto:foirequests@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

**L. Cole**

Border, Immigration and Citizenship System Policy and Strategy Group

## **Annex A: Public interest test arguments in relation to section 36**

### Considerations in favour of disclosing the information

The Home Office has a responsibility to conduct its business in an open and transparent manner, in line with the Government's transparency agenda. If a member of the public wishes to speak to a Home Office employee, or e-mail a specific team directly, the information (contact details) would provide them with a direct means of doing so. This could ultimately increase engagement between the public and the Home Office and could provide the public with an enhanced level of customer service.

### Considerations in favour of withholding the information

If the information were to be disclosed, it would provide the public with a direct telephone number and e-mail addresses of specific teams within the Home Office. If this information were to be in the public domain, staff within those teams would likely receive a significant increase in telephone calls and e-mails from the public, many of which would be unrelated to their area of activity. This would be an inefficient use of resources; would reduce the time they have to perform their daily activities; and would likely result in a poor customer experience. Controlling immigration and securing the border are the Home Office's main priorities and it would not be in the public interest to divert staff away from the work they complete to achieve these objectives. If a member of the public wishes to contact the Home Office, there are official channels for them to do so. Details can already be found on GOV.UK at: <https://www.gov.uk/contact-ukvi/overview> and so the release of the information would not provide them with an additional level of service.

### Conclusion

The public interest is best served by maintaining the exemption and withholding the information.

## **Annex B: Public interest test arguments in relation to section 31**

### Considerations in favour of disclosing the information

Annex 8: Border Force has a responsibility to conduct its business in an open manner, in line with the Government's transparency agenda. The disclosure of the information would assure the public that Border Force is committed to facilitating the free movement of people when it is appropriate, and to ensure only individuals with the right to enter the UK are authorised to do so. This would ultimately increase public confidence in the work of Border Force.

Annex 13: Border Force has a responsibility to conduct its business in an open manner, in line with the Government's transparency agenda. The disclosure of the information would assure the public that Border Force is committed to conducting thorough investigations to ensure the relationship between the individual and the EEA national is genuine, to ensure only individuals with the right to enter the UK are authorised to do so. This would ultimately increase public confidence in the work of Border Force.

### Considerations in favour of withholding the information

Annex 8: Disclosure would provide information on how a Border Force officer will assess an EEA national arriving in the UK if there is a question about their right to be admitted to the UK. If this information was in the public domain, it would provide insight into the

techniques used by officers to assess the suitability of EEA nationals and could lead individuals to change their behaviour to attempt to mislead officials into believing a fraudulent circumstance. This could result in individuals being admitted to the UK when they do not have the right to be so. There is a public interest in ensuring the integrity of the borders and it would not be in the public interest to compromise it.

Annex 13: The disclosure of the information would provide information on how a Border Force officer determines whether the relationship between the individual and EEA national is genuine. If this information was in the public domain, it would provide insight into the interview techniques used by officers and could lead individuals to change their behaviour, to attempt to mislead officials into believing a fraudulent relationship is genuine. This could result in individuals being admitted to the UK when they do not have the right to be so. There is a public interest in ensuring the integrity of the borders and it would not be in the public interest to compromise it.

### Conclusion

The public interest is best served by maintaining the exemption and withholding the information.