



Home Office

Corporate Services
2 Marsham Street
London SW1P 4DF

020 7035 4848
(switchboard)
www.homeoffice.gov.uk

Marcin Musial
request-244782-
25eced42@whatdotheyknow.com

12th February 2015

Dear Mr Musial,

Reference number: 33855

Thank you for your e-mail of in which you asked for an internal review of our response to your Freedom of Information (Fol) request for the following information:

- *correspondence sent/received by Theresa May regarding my FOI request (as I understand, your reference is 28795)*
- *forecasted/estimated cost of appeal to the First Tier Tribunal.*

I have now completed the review. I have examined all the relevant papers and have consulted the policy unit which provided the original response. I have considered whether the correct procedures were followed and assessed the reasons why information was withheld from you. I confirm that I was not involved in the initial handling of your request. My findings are set out in the attached report. My main conclusion is the original response was correct, the information is exemption from disclosure under section 36.

A full explanation of this decision can be found in the report below.

Yours sincerely,

A Anokwuru
Information Access Team

Switchboard 020 7035 4848
E-mail info.access@homeoffice.gsi.gov.uk

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by Marcin Musial (33855)

Responding Unit: Information Access Team (IMS)

Chronology

Original Fol request: 17th December 2014

IMS response: 15th January 2015

Request for internal review: 15th January 2015

Subject of Request:

1. Mr Musial submitted the following request for information under the Freedom of Information Act:

I would like to know the background of significant delays in your processes, reasons behind your reluctance to release the information and cost to the taxpayer. Therefore, I request you to release:

- correspondence sent/received by Theresa May regarding my FOI request (as I understand, your reference is 28795)
- forecasted/estimated cost of appeal to the First Tier Tribunal

The response by IMS

2. IMS withheld the information under section 36 (2)(b) & (c) of the Act (prejudice to effective conduct of public affairs)

The full response can be found at **Annex A**.

Mr Musial's request for an internal review

3. Mr Musial submitted a request for an internal review as he felt the response failed to explain specific reasons why the information was withheld.

A full copy of Mr Musial's request for an internal review can be found at **Annex B**

Procedural issues

4. Mr Musial submitted the request for information on 17th December 2014.
5. IMS provided a full response on 15th January 2015 which was the eighteenth working day.
6. IMS complied with sections 17(1)(a) and 17(1) (c) by stating that the information requested is exempt and providing sufficient detail as to why those exemptions were applied.
7. Mr Musial was informed of the right to an independent internal review into the handling of the request, as is required by section 17(7)(a) of the Act. The response also informed him of the right of complaint to the Information Commissioner, as specified by section 17(7)(b) of the Act.

Consideration of the response

8. IMS withheld the requested information under section 36(2) which states:

Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act

(b) would, or would be likely to, inhibit (i) the free and frank provision of advice and

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs

9. Section 36 can only be applied if 'in the reasonable opinion of a qualified person' disclosure would or would be likely to give rise to the prejudice in question. In the case of the Home Office, this means the decision must be made by a Minister.
10. We recognise that there may be some public interest in disclosure of correspondence sent and received from Teresa May, as well as the estimated cost of the appeal, if only on the general ground of openness and transparency.
11. However, I believe that disclosure of the correspondence would inhibit the internal discussions which the Department has about its approach to answering FOI requests. Ministers and officials need to be able to think through all the implications of particular options and undertake rigorous and candid assessments of the risks in disclosing information.
12. Disclosure of our internal emails in relation to Mr Musial's request would compromise the 'safe space' in which officials provide advice to Ministers, and therefore the disclosure would inevitably inhibit the free and frank provision of such advice.
13. With regards to the estimated cost of the appeal, I believe that section 36(2)(c) was correctly engaged. Disclosure of such information could indicate the level of Counsel which the Home Office believed was necessary, as well as the amount that they were prepared to spend in order to defend their position. This could prejudice the appeal outcome.
14. IMS correctly applied section 36(2)(b)&(c) to the information requested.
15. Mr Musial is correct when he says that his not being party to the appeal is irrelevant to his request. The information was withheld because the Minister agreed that it was exempt under s36, not because Mr Musial is not a party.
16. The information about being a party to the appeal was included in the response as it was believed that Mr Musial would find it insightful.

Conclusion

17. IMS complied with sections 17(1)(a) and 17(1)(c) by stating that the information requested is exempt and providing sufficient detail as to why the exemption at section 36 was applied.
18. IMS correctly applied the exemption at section 36 to all the information requested.

A Anokwuru
Information Access Team
Home Office
12th February 2015

Annex A - FOI response

Corporate Services
Directorate
2 Marsham Street
London SW1P 4DF
020 7035 1022 (direct line)
www.gov.uk

Mr Marcin Musial

Via e-mail: request-244782-
25eced42@whatdotheyknow.com

15 January 2015

Dear Mr Musial

Freedom of Information request (our reference 33855)

I am writing further to my e-mail of 19 December about your Freedom of Information (FOI) request of 17 December 2014.

You asked for the following information:

I would like to know the background of significant delays in your processes, reasons behind your reluctance to release the information and cost to the taxpayer.

Therefore, I request you to release:

- correspondence sent/received by Theresa May regarding my FOI request (as I understand, your reference is 28795)*
- forecasted/estimated cost of appeal to the First Tier Tribunal.*

I confirm that the Home Office holds the information which you have requested. After careful consideration we have decided that it is exempt from disclosure under section 36(2)(b)(i) and 36(2)(c) of the Act. Section 36(2)(b)(i) exempts information if its disclosure would or would be likely to inhibit the free and frank provision of advice; section 36(2)(c) exempts information if its disclosure would otherwise prejudice the effective conduct of public affairs, or would be likely to do so.

Section 36 is a qualified exemption, which means that we must consider whether the balance of the public interest lies in disclosure or in maintaining the exemption. Public interest considerations for and against disclosure are set out in the attached Annex.

So far as we are aware you have not been made a party to the Home Office appeal to the First-tier Tribunal about the Information Commissioner's decision notice of 12 November 2014 (reference FS50514999). You may if you wish apply to the First-tier Tribunal to be joined as a party. The decision whether to accede to such a request would be entirely a matter for the Tribunal itself. We do not yet have a reference number from the Tribunal for the appeal, but

Annex A cont...

the ICO decision reference should be sufficient to identify it. The Tribunal's website is at <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>.

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 33855. 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 Third Floor, Peel Building
2 Marsham Street
London SW1P 4DF
e-mail: info.access@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

Adrian Brook
Information Access Team

Annex A cont...

Annex: Public interest test arguments in relation to section 36

Section 36 is a qualified exemption, so we must carry out a Public Interest Test to balance the public interest in disclosure against the public interest in favour of withholding the information.

Considerations in favour of disclosing the information

We recognise that there is public interest in openness and transparency in all aspects of government and that there is a particular public interest in information about public spending.

Considerations in favour of maintaining the exemption

The information requested consists of advice to Ministers about an appeal which is in its earliest stages. It is not in the public interest to disclose information which compromises the safe space in which officials provide advice to Ministers and therefore inhibits the free and frank provision of such advice. Nor is it in the public interest to disclose information which could compromise an ongoing legal process.

Conclusion

We conclude that the balance of the public interest lies in withholding the information

Annex B - request for Internal Review

Please note that you failed to explain specific reasons why the information have been withheld.

Note that me being or not party to the Information Tribunal appeal case is completely irrelevant to my request. I clearly stated reasons why I believe public have right to know the information requested. Your reply failed to address any of those.

Annex C

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your Fol 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