



Home Office

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

Colin Yeo  
[request-318009-42d878a1@whatdotheyknow.com](#)

22<sup>nd</sup> April 2016

**Freedom of Information request (our ref: 38117): internal review**

Dear Mr Yeo,

Thank you for your e-mail of 22<sup>nd</sup> March 2016, in which you ask for an internal review of our response to your Freedom of Information (Fol) request 38117.

On the 23<sup>rd</sup> February 2016, you asked for the *“current average waiting times”* for EU residence cards, EU residence certificates, EU permanent residence cards and EU permanent residence certificates. You stated *“if the precise data is not available I would be grateful for whatever management information you currently hold on waiting times for EU residence documents”*. Your full request can be found in Annex A.

The response provided you with the information, based on applications received between 1<sup>st</sup> January 2015 and 31<sup>st</sup> December 2015. The Home Office withheld the information covering January to March 2016 under section 36(2)(c) (the effective conduct of public affairs) of the Act, as the breakdown of information requested will form part of the overall figures scheduled for publication and to release it would undermine the Department's ability to use its staff resources effectively in a planned way. The full response can be found in Annex B.

In your request for an internal review, you challenged the decision to withhold the most recent statistics and queried the public interest considerations detailed in the response. You also asked *Why is it that non EEA nationals can access information about the waiting times for different categories of visa, but EEA nationals and their families cannot?* Your full request for an internal review can be found in Annex C.

I have now completed the review. I have consulted the policy unit which provided the original response and have considered whether the correct procedures were followed. I confirm that I was not involved in the initial handling of your request.

The Home Office should have asked you to clearly specify what timeframe you were interested in, as the asking for the *“current”* waiting times is open to interpretation. However, this review will consider the request to be for *“whatever management information you currently hold”*, as this was also stated in your request.

I find the Home Office was at fault to have considered information covering January to March 2016 to be in scope of your request. Firstly, because a public authority is only required to consider information held at the time a request is received and secondly, because information covering this time is currently held as raw data and has not been collated in the format it has been requested. It is therefore not held as management information. The Home Office were subsequently at fault to have withheld information covering this timeframe under section 36(2)(c) (the effective conduct of public affairs) of the Act.

I confirm the latest management information held covers 1<sup>st</sup> January to 31<sup>st</sup> December 2015 and this information was correctly communicated to you in the response.

In your request for an internal review, you queried the information available on waiting times for EEA and non-EEA nationals.

I confirm the Home Office publishes data on both EEA and non-EEA nationals. Information on performance against processing targets can be located using the following link:

<https://www.gov.uk/government/collections/migration-transparency-data>

You may be interested to know, the published quarterly Immigration Statistics (table ee\_02) can be filtered by EEA or non-EAA nationals in the "Country of nationality" column (Column C).

[European Economic Area data tables](#),

Yours sincerely

**L. Picton**  
**Information Rights Team**

Switchboard 020 7035 4848  
E-mail [FOIRequests@homeoffice.gsi.gov.uk](mailto:FOIRequests@homeoffice.gsi.gov.uk)

## **Annex A – Initial request**

I would be grateful if you could tell me the current average waiting times for:

1. EU residence cards
2. EU residence certificates
3. EU permanent residence cards
4. EU permanent residence certificates

If the precise data is not available I would be grateful for whatever management information you currently hold on waiting times for EU residence documents.

## Annex B - Response

Dear Mr Yeo

Thank you for your enquiry of 23 February in which you requested information on Waiting times for EU residence documents. Your request is being handled as a request for information under the Freedom of Information Act 2000.

You requested:

*I would be grateful if you could tell me the current average waiting times for:*

1. EU residence cards
2. EU residence certificates
3. EU permanent residence cards
4. EU permanent residence certificates

*If the precise data is not available I would be grateful for whatever management information you currently hold on waiting times for EU residence documents.*

The following report is based on all applications raised between 01 January 2015 to 31 December 2015. All EEA case types requested have been included. Average processing time is calculated from the date an application is raised to when it has been dispatched. In line with published stats a variable has been applied which excludes all cases with an outcome date after the 31 December 2015.

<b>EEA Case Types</b>	<b>AVG App to Despatch</b>
EU permanent residence cards	125.49
EU permanent residence certificates	42.65
EU residence cards	125.13
EU residence certificates	55.12

The figures quoted are not provided under National Statistics protocols and have been derived from local management information and are therefore provisional and subject to change.

We do hold the information you have requested for the period up to March 2016, but as it will not be published into the public domain until later this year, we are unable to provide it yet.

In relation to the information covering January – March 2016, I can confirm that the Home Office holds the information that you requested. However, after careful consideration we have decided that the information is exempt from disclosure under section 36(2)(c) of the Freedom of Information Act. This provides that information can be withheld where disclosure would prejudice the effective conduct of public affairs and the public interest falls in favour of applying the exemption.

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

## **Annex B (cont)**

### **Public interest test**

Some of the exemptions in the FOI Act, 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 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

There is a general public interest in statistics relating to migration. Disclosure of the information requested would increase accountability and transparency and enhance the public's understanding of current trends in types of applications and processing times. All of these factors are in the public interest and there is some weight to be given to the considerations in favour of disclosing the information.

#### Considerations in favour of withholding the information

The Department publishes migration statistics quarterly and intends to publish migration statistics for January – March 2016 later this year. Although the exact breakdown of the information requested will not be published, it will form part of the overall figures. Premature release of the subset of data requested could form part of a series of requests which together could build up a picture of the overall data due to be published. Although it is accepted that you may not necessarily be interested in making subsequent requests, information released to one person under the FOI Act is, in effect, released to the public at large. This would provide an opportunity for others to submit additional requests ahead of the planned publication date in order to obtain the information prematurely.

Premature disclosure of statistics without adhering to established pre-publication procedures (which include internal consultation about the final statistics being published) would undermine the Department's ability to use its staff resources effectively in a planned way, so that reasonable publication timetables are not affected. We conclude that the overall balance of the public interest lies in favour of withholding the information to ensure that the Home Office is able to publish migration statistics in a managed and coherent way.

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 38691. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

## **Annex B (cont)**

Information Access Team  
Home Office 3rd Floor, Peel Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [info.access@homeoffice.gsi.gov.uk](mailto: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 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

C Heap  
Customer Service Operations

## **Annex C – Internal review request**

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 Home Office's handling of my FOI request 'Waiting times for EU residence documents'.

I am grateful for release of the waiting times for the previous year, 2015. However, I am disappointed that release of up to date statistics has been refused. I wish to challenge that decision.

Firstly, I cannot see how it can rationally be said that release of waiting times for residence documents can possibly "build a picture" or similar of as yet unreleased immigration statistics. I am not requesting the numbers of applications made, only the waiting times for applications.

Secondly, there is an obvious and strong public interest in applicants knowing what the waiting times are or have recently been roughly at the time the applicant will apply so that they can plan for the delay and the retention of their passport during that time.

Thirdly, up to date waiting time information is made available for other types of immigration application for non EEA nationals here: <https://www.gov.uk/visa-processing-times>. This suggests that there is no real public interest argument in withholding that type of information on the grounds it might, with other FOI releases, give some sort of advance disclosure of unpublished immigration statistics. It also raises the issue of differential treatment of EEA nationals. Why is it that non EEA nationals can access information about the waiting times for different categories of visa but EEA nationals and their families cannot? This kind of unequal treatment is something that is contrary to EU law.

A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/waiting\\_times\\_for\\_eu\\_residence\\_d](https://www.whatdotheyknow.com/request/waiting_times_for_eu_residence_d)

Yours faithfully,

Colin Yeo

## **Annex D**

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