

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 December 2011

**Public Authority:** Home Office  
**Address:** Seacole Building  
2 Marsham Street  
London  
SW1P 4DFX

### Decision (including any steps ordered)

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1. The complainant has requested information about the timeline for announcing proposals to restructure parts of the Identity and Passport Service.
2. The Commissioner's decision is that the Home Office does not hold any further information within the scope of the complainant's requests. It also provided him with adequate advice and assistance with regard to his requests. However, it should have provided a formal denial as to whether certain information was held within 20 working days. In failing to do so, it contravened sections 1 and 10 of the FOIA.
3. The Commissioner does not require the public authority to take any steps because it provided a formal denial to the complainant during the course of his investigation.

### Request and response

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4. On 20 February 2011, the complainant wrote to the Identity and Passport Service (IPS) (which is an executive agency of the Home Office<sup>1</sup>) and submitted 9 requests for information about recent proposed changes at the IPS. This decision notice focuses only on the following 2 requests:

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<sup>1</sup> <http://www.homeoffice.gov.uk/agencies-public-bodies/ips/>

*"2) Damian Green has stated that IPS proposals for the Regional Information Commissioner's Office and Interview Office Network restructure were made public on 08/10/10.*

*a) On what date were these proposals finalised? If unable to give exact date please provide a date that it was no later than (e.g. 07/10/10)?*

*3) On what date did IPS first engage staff with regard to the above restructure proposals?"*

5. For ease of future reference, these requests will now be referred to as Request 2a) and Request 3).
6. The IPS responded on 21 March 2011. It supplied the date "*8 October 2010*" in response to both requests. The complainant asked that these two responses be reviewed. He argued that information in the public domain showed that this date was inaccurate for both requests. He stated that Damien Green MP had received the proposals in question on 13 September 2010 and had then approved them. He also said that "*the timelines on the internet of when the media first got hold of the information are inconsistent with your earlier response*".
7. The complainant also disputed that IPS first engaged with staff on the date given. He drew attention to the fact that staff in the Information Office Network (ION) were not informed until the following week. He did not raise specific concerns with the Home Office about the extent or limit to which advice and assistance had been offered in its response to him.
8. The internal review was carried out by the Home Office's information management section rather than at the IPS. The Home Office wrote to the complainant setting out the outcome of this review on 23 May 2011.
9. In relation to Request 2a), it said that the date given was the "*no later than*" date that was requested in Request 2a). It said that this should have been made clearer to the complainant. It confirmed that "*Damian Green received the proposals from IPS on 13 September 2010 and had approved them **no later than** [Home Office emphasis] 8 October 2010: 26 calendar days after receiving them*".
10. In relation to Request 3), it said that 8 October 2010 was the date it sent out its first communication to staff regarding the above

proposals. This is therefore considered to be the date that IPS first communicated with staff regarding the restructuring proposals.

11. In relation to the advice and assistance that it was obliged to provide, the Home Office said that the complainant was entitled under the FOIA to rephrase his questions. It also provided him with a link to written evidence given to the Welsh Affairs Select Committee concerning the future of the Newport Passport Service. This link (while live at the time of the internal review) is now defunct. However, during the course of the Commissioner's investigation, the Home Office provided a fresh link to the same information<sup>2</sup>.

### **Scope of the case**

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12. The complainant contacted the Commissioner to complain about the way his request for information had been handled. His complaint was in two parts:
  - He said the Home Office did not provide him with all the information it held within the scope of Requests 2a) and 3) because the date it provided was incorrect for both requests.
  - He also said that the Home Office did not contact him to clarify his requests if it was unsure about their scope. It had therefore failed to provide adequate advice and assistance.
13. The Commissioner considers that the Home Office has provided the complainant with all the information it holds within the scope of his Request 2a) and his Request 3). It has also provided him with adequate advice and assistance in relation to this request. However, it failed to confirm within 20 working days that it held no record of the actual date that Damien Green MP signed off the proposals. In failing to deny that it held a record of the date that Damien Green MP signed off the proposals, it contravened the requirements of section 1 and section 10 of the Act.

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<sup>2</sup>

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmwelaf/590/590we01.htm>

## Reasons for decision

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14. As set out above, this case looks at two issues:

- Whether further information is held within the scope of either of the complainant's requests; and
- Whether the public authority provided adequate advice and assistance.

### *Is further information held?*

15. Section 1 of FOIA sets out a two-part obligation for public authorities. Firstly, the public authority must confirm or deny that it holds information described in a request<sup>3</sup>. Secondly, if held, it must provide that information. Public authorities must also provide a response to an FOIA request within 20 working days in accordance with the requirements of section 10 of the Act. (Exemptions can apply to both parts of the two-part obligation. However, no exemptions fall to be considered in this case.)
16. This notice will now look at whether the Home Office provided the complainant with all the information it held within the scope of his Request 2a) and Request 3) within 20 working days.
17. The Commissioner and the complainant exchanged correspondence regarding the precise meaning of his requests. At the same time, the Commissioner tried to find out what information in the public domain (specifically, online information) would contradict the timeline set out by the Home Office and indicate that other information was held. Unfortunately, the complainant did not supply links to information available online in support of his complaint although he sought to rely on the existence and detail of such information as part of his complaint. The Commissioner also asked the Home Office a number of questions about what information it held.
18. When considering disputes as to whether requested information is held, the Commissioner considers the matter to the civil standard, that is, on the balance of probabilities.

### *Request 2a)*

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2000/36>

19. The Commissioner told the complainant that, in his view (and using the common dictionary definition), "*finalise*" must mean when the final version was formally agreed. In this context, the Commissioner argued that this must mean when the relevant Minister at the Home Office signed off the proposals. Until he or she had done so, the proposals could not be said to be finalised. The complainant disagreed and said that it would mean when the IPS Board came to its view as to the proposals it would make.
20. The Commissioner notes that the Home Office provided the complainant with information about when the IPS Board provided its recommendations to Mr Green. This is found in the Welsh Affairs Select Committee report referred to above<sup>4</sup>. The Home Office provided a link to this report at its internal review of how it had handled the complainant's request.
21. The Commissioner explained to the complainant that, for the purposes of FOIA, the public authority in this case was the Home Office and not the IPS. This point appeared to be at the heart of the complainant's misunderstanding regarding the Home Office's response.
22. The Commissioner remains of the view that the date the Home Office finalised the proposals would be the date they were signed off by the relevant minister, Damien Green MP. The matter at issue under the FOIA would, therefore, be whether the Home Office holds a record which shows the date that Damien Green MP formally signed off the proposals. The Commissioner pursued this point with the Home Office.
23. The Home Office advised that, having checked with relevant colleagues at the IPS, "*the leak pushed aside the usual processes and no record [showing formal ministerial approval of the proposals] is held, given the circumstances*".
24. On being told this during the Commissioner's investigation, the complainant queried whether it was normal for a public authority not to have a copy of a written Ministerial approval. He felt this added weight to his view that further information must be held within the scope of Request 2a). The Commissioner accepts it is may very well not be normal procedure. However, given the

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<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmwelaf/590/10111003.htm> (see response to question 63)

circumstances (where important information affecting individuals working at IPO came into the public domain via a leak) and taking into account the detail set out in the Welsh Affairs Select Committee report (see paragraphs 25 – 30), he believes it is wholly plausible that no record showing written Ministerial approval of the proposals is held.

25. The Commissioner has concluded that, on the balance of probabilities, no further information is held within the scope of Request 2a). In reaching this conclusion, he notes particularly the comments at paragraph 26 in the report:

*"The Minister accepted that the announcement should have occurred in a more "orderly way" while Alan Brown commented on the results of the announcement: ... we [PCS union] had members who effectively were being told that their jobs were going and were left in tears [...] with the announcement that was made on that day."*

26. However, the Home Office should have formally denied holding a record of the date the Minister signed off the proposals. In failing to do so within 20 working days of the request it contravened the requirements of section 1(1)(a) and section 10 of the FOIA. That said, it did provide a "no later than" date as per the alternative request set out in Request 2a).

*Request 3)*

27. The complainant and the Commissioner also discussed the meaning of the word "engage" as found in Request 3. The Commissioner argued that this can be construed as meaning when contact was first made on the subject in question. The complainant argued that, instead, "engage" must mean when meaningful two-way communication began. The Commissioner accepted that "engage" could be read objectively in either way in the context of the request.
28. The Commissioner asked the Home Office to consider both objective readings of the term "engage" when responding to his enquiries about what recorded information it might hold. The Home Office advised:

*"Staff were informed by the Newport Regional Office Manager at the 8 October 2010 meeting that rumours they were hearing on*

*the radio and reading on social media sites were true and that a full briefing session would be held on 11 October 2010.*

*All Newport staff were formally engaged on 11 October 2010 at a meeting at the Newport passport office, to which all staff were invited. Staff were provided with e-mail addresses at this time and the opportunity to ask questions of the Chief Executive, the Newport Regional Office Manager and the Executive Director of Human Resources. Interview Office staff were also engaged from 11 October 2010. It is important to note that the announcement on 11 October 2010 was simply the start of consultation. Informal consultation on the future of both the Newport Passport Office and the future shape of the Interview Office Network had also been held with staff representatives since 20 July 2010."*

29. The Home Office authorised the Commissioner to disclose this to the complainant.
30. The Commissioner would note that this turn of events is also set out in the Welsh Affairs Select Committee report [See points 25-29<sup>5</sup>], a link to which was provided to the complainant at internal review.
31. The Commissioner is satisfied that, when stating "8 October 2010", the Home Office provided the complainant with the information he requested at Request 3) using an objective reading of that request within the timescale set out in FOIA. In the Commissioner's view, 8 October 2010 was the date on which IPS "first engaged staff with regard to the ... restructure proposals". This was the date that it first made contact with staff about the restructure proposals. The Home Office provided this date in response to the complainant's request. IPS went on to commence a two-way dialogue with staff on the following Monday, 11 October 2010. The Home Office provided this date to him at internal review when it provided a link to the Welsh Affairs Select Committee report which sets out a fuller description of the turn of events in question.
32. The Commissioner is therefore satisfied that the Home Office provided the complainant with all the information that it held within the scope of his Request 3).

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<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmwelaf/590/59006.htm#note32>



*Did the public authority provide advice and assistance?*

33. The complainant alleges that the Home Office failed to provide adequate advice and assistance in relation to Request 2a) and Request 3). He said that it failed to contact him where it was unsure as to the scope of his requests.
34. Section 16 of FOIA requires public authorities to provide appropriate advice and assistance to requesters. It is obliged to provide advice and assistance "*so far as it would be reasonable to expect the authority to do so*". There is a Code of Practice (established under section 45 of the FOIA) which sets out guidelines for public authorities in this regard<sup>6</sup>.
35. The Commissioner notes that the Home Office provided the complainant with a link to a relevant report of the Welsh Affairs Select Committee. This report appears to be a detailed and comprehensive review of the events in question. It includes a timeline of those events and contains comments from a number of different stakeholders about the events and the proposals that were made regarding the Newport Passport Office. It also includes criticism of the actions of the Home Office. The Commissioner is satisfied that it was not necessary to draw the complainant's particular attention to sections or evidence submissions contained within the report that might be relevant to his request. This is particularly so because the report is easily navigable online.
36. At internal review, the Home Office also reminded the complainant that "*FOIA enables him to submit a further FOI request in which he has the choice to rephrase his questions*". The Commissioner notes that the complainant has taken the opportunity to make other FOIA requests to the Home Office before and since these two requests. The Home Office left it to the complainant to rephrase his requests in the light of what he might have read in the report and/or have knowledge of from other sources. The Commissioner thinks that this is entirely appropriate in this case.
37. The Commissioner believes that the complainant and the Home Office were at crossed purposes regarding the reading of Request 2a) and 3) and the relationship between IPS and the Home Office under FOIA. The Commissioner does not believe either party was

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<sup>6</sup> <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>



acting deliberately in this regard. The complainant says that the Home Office should have contacted him if it was unsure as to what information he was seeking. The Commissioner believes it did so by drawing his attention to a detailed, relevant and, at times, uncomplimentary report and by reminding him of his right to make further requests. The Commissioner is satisfied that these actions constituted reasonable and adequate advice and assistance to the complainant in relation to Requests 2a) and 3).

38. For reasons set out above, the Commissioner thinks that the Home Office should have been more unequivocal in its response regarding what records it held regarding Request 2a). Had it done so, this may have enhanced the complainant's understanding of events, particularly when reading the detail of the Select Committee report that was provided to him. However, its failure to do so is not a breach of the requirements of section 16.

## Right of appeal

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39. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

40. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
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**SK9 5AF**