

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2013

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to a meeting between two senior UK Border Agency officials. The Commissioner's decision is that the information identified by the Home Office as relevant withheld information does not fall within the scope of the request. He requires no steps to be taken.

Request and response

2. On 23 January 2012 the complainant requested information of the following description:

"the verbatim contents of the meeting between Rob Whiteman and Brodie Clark at the disciplinary interview where Mr Clark is alleged by Mr Whiteman and the Home Secretary to have admitted deliberately breaching Ministerial instructions, a claim Mr Clark denies".
3. The Home Office provided its substantive response on 12 September 2012. While confirming that it holds the information the complainant has requested, the Home Office refused to provide that information, citing section 40(2) of FOIA (personal information) as its basis for doing so.
4. Following an internal review, the Home Office wrote to the complainant with the outcome of that review on 9 January 2013. It upheld its original position.

Background

5. At the time of his resignation in November 2011 Mr Clark held the position of Head of the UK Border Force, which at the time was part of the UK Border Agency (UKBA). Mr Rob Whiteman was Director General of the UKBA.
6. On 17 March 2012, an article on the BBC website said:

"Brodie Clark stood down last year as head of the UK Border Force after being publicly blamed by Theresa May for relaxing entry checks at airports in order to reduce queues..... A joint statement issued by the Home Office and the First Division Association, the trade union for senior public officials, said: "The Home Office and Mr Clark can announce that differences between them relating to Mr Clark's departure from the UK Border Agency in November 2011 have been settled. The settlement is made without the admission of liability or wrongdoing from either side."

Scope of the case

7. The complainant contacted the Commissioner on 15 January 2013 to complain about the way his request for information had been handled. In disputing the Home Office's application of section 40(2), he told the Commissioner:

"Under the terms of the FOI Act there is no valid reason for the information requested to be withheld and yet for seventeen months after the original request in November 2011 The Border Agency have refused to comply with the requirements of the Act and release this information".
8. The Commissioner considers the scope of his investigation to be the Home Office's application of section 40(2).

Reasons for decision

Section 1 general right of access to information held by public authorities

9. During the course of his investigation, the Home Office provided the Commissioner with a copy of the information it is withholding in this case. It confirmed that it considers that that information falls within the scope of the request.
10. The Commissioner acknowledges that the Home Office told the complainant:

"I have viewed the withheld information and can confirm that it contains a note of a meeting between Rob Whiteman and Brodie Clark that might loosely be described as a 'disciplinary' meeting. There is no other record of a meeting within the terms as described by [the complainant]".
11. The Commissioner recognises that the Home Office clearly tried to respond constructively to the complainant and dealt with the information it is withholding as being in scope of the request.
12. However, the Commissioner has considered the information withheld by the Home Office alongside the wording of the request. Having done so, the Commissioner takes the view that, objectively, the information withheld by the Home Office does not fall within the scope of the request.
13. In the Commissioner's view, the information identified by the Home Office does not amount to a note of a disciplinary interview and therefore it does not meet the description in the request.
14. In these circumstances, the Home Office is not required to take any further steps.

Right of appeal

15. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

16. 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.
17. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**