

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 June 2015

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

Decision (including any steps ordered)

1. The complainant requested a document titled "Country Returns Documentation Guide" that lists the documentation requirements other countries have in place in order to accept the return of their citizens. The Home Office disclosed this document, but withheld some of the content under the exemption provided by section 31(1)(e) (prejudice to the operation of the immigration controls) of the FOIA.
2. The Commissioner's decision is that the Home Office cited section 31(1)(e) correctly and so it was not obliged to disclose the withheld content.

Request and response

3. On 11 November 2014 the complainant wrote to the Home Office and requested information in the following terms:

"The document 'Country Returns Documentation Guide', to include information under each of the following headings for every country

1. *European Union letter (EUL) or emergency travel document (ETD)*
2. *Current likelihood for ETD agreement*
3. *Minimum requirements for ETD or EUL*
4. *Current country information*
5. *Constraints*
6. *Approximate timescales: With original evidence*
7. *Approximate timescales: With copy evidence*
8. *Approximate timescales: With no evidence*

9. *ETD valid for*"

4. The Home Office responded on 18 November 2014. The document specified in the request was disclosed, but with some of its content redacted under the exemptions provided by sections 27(1)(a) (prejudice to international relations) and 31(1)(e) (prejudice to the immigration controls) of the FOIA.
5. The complainant responded on 8 December 2014 and requested an internal review in relation to the redactions from the disclosed document. The Home Office responded with the outcome of the internal review on 8 January 2015. The conclusion of this was that the withholding of some of the content of the guide under sections 27(1)(a) and 31(1)(e) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 19 March 2015 to complain about the part refusal of her information request. The complainant indicated that she did not agree with the exemptions that had been cited by the Home Office and in particular that the Home Office had previously disclosed similar information to that in question in this case.

Reasons for decision

Section 31

7. The Home Office cited the exemption provided by section 31(1)(e) of the FOIA. This section provides an exemption for information the disclosure of which would, or would be likely to, prejudice the operation of the immigration controls. Consideration of this exemption involves two stages. First the exemption must be engaged as a result of prejudice relevant to the exemption being at least likely to result. Secondly, this exemption is qualified by the public interest, which means that where the exemption is engaged, the information must nonetheless be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
8. Covering first whether the exemption is engaged, the Home Office has specified that it believes that prejudice *would be likely* to result, rather than *would* result. The approach of the Commissioner is that in order for him to accept that prejudice would be likely to result, there must be a real and significant likelihood of that outcome occurring, rather than the

chances of that outcome being remote. The question here is, therefore, whether the Commissioner agrees that there is a real and significant likelihood of disclosure of the information in question resulting in prejudice to the immigration controls.

9. The information in question here is content redacted from a spreadsheet with the title "*Country returns documentation guide (Nov 2014)*". This guide lists the documentation necessary for deportation to all other countries and comments on any particular issues there are with deportations to each country. The Home Office stated that the "*purpose of the Guide is to assist Home Office officials to arrange the return of immigration offenders to their home country*".
10. The argument advanced by the Home Office as to why this exemption was engaged was twofold, but both concerned disclosure making it more difficult for deportations to be carried out. First, the Home Office argued that some countries would be displeased with disclosure of the information in question. The Home Office emphasised that agreements for countries to accept the return of their citizens are in some cases fragile and the result of lengthy negotiation. It believed that disclosure of the information in question could result in the jeopardising of some of those agreements, making deportations to those countries more difficult.
11. Secondly, it argued that the information revealed particular barriers to deportation to some countries, which it believed individuals wishing to frustrate a deportation process could exploit. It also noted that the information records that there are no agreements with some countries and argued that this would result in there being fewer voluntary departures to those countries as their citizens would be aware that being returned involuntarily was unlikely.
12. The Commissioner has focussed on this second argument as, having reviewed the content in question, he finds it convincing. The guide lists in detail the specific documentation that is necessary for each country to accept a returnee. In some cases, it lists specific barriers to deportation and for some countries notes that there is no procedure in place for involuntary returns.
13. It is in the nature of the process of involuntarily removing an individual from the UK that the individual will attempt to resist that process. The Commissioner accepts that disclosing information that records how this process could be frustrated would be likely to be exploited in that manner. The Commissioner also accepts that the process of removing individuals without leave to remain is part of the "immigration controls" referred to in section 31(1)(e).

14. The complainant argued that it was not necessary to withhold this information in this case as similar information had been disclosed in response to earlier requests. The Commissioner recognises that this is a relevant factor to take into account, but nonetheless remains of the view that the link between disclosure of the information in question and the likelihood of prejudice is clear. That similar information may have been disclosed previously does not, therefore, prevent the information in question from being withheld in this case.
15. For these reasons, the Commissioner finds that there is a real and significant likelihood of disclosure of the information in question resulting in prejudice to the immigration controls. The conclusion of the Commissioner is, therefore, that the exemption provided by section 31(1)(e) of the FOIA is engaged.
16. Having found that the exemption is engaged, the next step is to consider the balance of the public interests. In forming a conclusion here, the Commissioner has taken into account the public interest in the transparency of the Home Office, and the public interest inherent in the exemption in avoiding prejudice to the operation of the immigration controls. This is in addition to the specific factors that apply in relation to the information in question.
17. Covering first public interest factors in favour of disclosure of the information, immigration is a matter of perennially high public interest and is currently at the very top of the political agenda. That the information in question relates to immigration is significant here. In particular, this information relates to attempts to combat illegal immigration, which is an issue of very great public interest. The subject matter of this information indicates public interest in its disclosure of significant weight.
18. However, the Commissioner is also of the view that the weight of this public interest is somewhat reduced due to the content of this information. This information is about the administration of immigration policy, rather than anything on the 'bigger picture' of policy in this area. This means that, whilst the subject matter of this information does indicate public interest in disclosure, this public interest is less acute than would have been the case had this information been more revealing about immigration policy.
19. The complainant argued that disclosure of this information would be in the public interest in order to assist immigration detainees and to assist tribunals hearing immigration cases. The issue here, however, is whether it would be in the public interest for this information to be disclosed into the public domain, rather than whether it should be disclosed for particular purposes. In any event, where disclosure is

required in relation to legal proceedings, there is a process separate from the FOIA for this.

20. Turning to factors that favour maintenance of the exemption, the public interest inherent in the exemption is mentioned above. When finding that this exemption was engaged, the Commissioner accepted that prejudice to the operation of the immigration controls was likely to occur through disclosure of the information in question. The Commissioner must give weight to the public interest in avoiding an outcome where prejudice to the operation of the immigration controls would be likely to occur.
21. Public attitudes about immigration and the control of it are also relevant here. Public concern about controlling the level of immigration is high and there is a correspondingly weighty public interest in avoiding disclosure that would be likely to prejudice the operation of the immigration controls.
22. The Commissioner has recognised valid public interest in the disclosure of this information on the grounds that it relates to immigration policy, albeit that the weight of that public interest is lower than would be the case in relation to information that is of more direct relevance to the immigration debate. However, he has also recognised that there is a weighty public interest in avoiding disclosure that would be to the detriment of the immigration controls and his conclusion is that this outweighs the public interest in disclosure. The finding of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so the Home Office was not obliged to disclose this information.

Right of appeal

23. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

24. 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.
25. 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

Jon Manners
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