

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2018

Public Authority: Home Office
Address: Lower Ground Floor
Seacole Building
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested a copy of the policy used to in relation to his claim. The Home Office provided the document it held but redacted information it considered fell under section 31(1)(e) of the FOIA – the operation of immigration controls.
2. The Commissioner's decision is that section 31(1)(e) of the FOIA is not engaged to the redacted information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a copy of the redacted information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 27 September 2017 the complainant made the following request for information:

"I do require the policy that the Home Office have used to reach their conclusion of my claim/complaint. I need to interrogate the policy to assess the accuracy of the contentions made, and if the approach is correct and challenge the adequacy of the policy."

6. The Home Office responded on the 9 November 2017 and disclosed a document, with redactions made from it under section 31(1)(e) of the FOIA. It advised that if it provided the redacted information it could provide a route for those who want to make a false claim for more financial redress than they are entitled to.
7. The complainant requested an internal review on the 12 November 2017.

Scope of the case

8. The complainant contacted the Commissioner on 18 January 2018 as he had no response from the Home Office to his internal review request.
9. Due to the lack of response to the internal review request, the Commissioner has decided to determine its refusal without the internal review being carried out.
10. The Commissioner therefore considers the scope of the case is to determine whether the Home Office is able to rely on section 31(1)(e) to make the redactions it has to the document it has provided.
11. The Commissioner has had sight of the released document and the redacted part of this document. The document at part 12.1.4 (which was part of the released material) states:

"This guidance is intended to apply to the consideration of individual claims for financial redress as a result of the maladministration of their case."

Reasons for decision

Section 31(1)(e) of the FOIA – the operation of immigration controls

12. Section 31(1)(e) of the FOIA states:

"Information which is not exempt information by the virtue of section 30 is exempt information if its disclosure would, or would be likely to, prejudice-

(e) the operation of immigration controls."

13. Section 31 is a prejudice based exemption. In order to be engaged, the following criteria must be met:

- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- it is necessary to establish that the level of likelihood of prejudice being relied upon by the public authority is met – ie whether disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

14. In this case, as stated, subsection (e) of section 31(1) relates to the operation of immigration controls. The Commissioner's guidance¹ on this subsection of 31(1) states:

"The exemption will be engaged if disclosure would, or would be likely to, prejudice physical immigration controls at points of entry into the United Kingdom. It could also protect information about issuing and approving work permits and the processing of asylum applications."

¹ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

15. The Home Office argues this withheld information is available only to caseworkers who are involved in the decision making process and it would not be in the public interest to disclose this information as it would reveal to those making applications the things that a case officer would consider when deciding individual cases. This would then allow those seeking compensation to potentially claim more than they were entitled to.
16. The Home Office has stated to the Commissioner that providing individuals full sight of the range of claims available could lead to inappropriate claims being submitted for financial redress.
17. The Commissioner's view is that the withheld information would not fall under the exemption set out at section 31(1)(e) as it is in relation to claiming financial redress. The exemption, in the Commissioner's view and as set out in her guidance is engaged for things such as:
 - the actual processing of immigration controls at points of entry into the United Kingdom.
 - protecting information about issuing and approving work permits and the processing of asylum applications."
18. Making a claim for financial redress would be a potential by-product following any disagreement with the handling of the examples set out above.
19. The redacted information, in the Commissioner's view, does not relate to the decision making process for immigration controls, such as a work permit applications or citizenship tests for example.
20. The Commissioner therefore finds the exemption is not engaged to the information that has been redacted and has therefore not gone on to consider the prejudice test.

Right of appeal

21. 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>

22. 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.
23. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF