

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 October 2011

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

Summary

The complainant requested information about the nationalities covered by a Ministerial Authorisation. The Home Office confirmed it held the information but withheld it citing the exemptions in sections 27 (international relations) and 31 (law enforcement). The Commissioner has investigated and has not found the exemptions engaged in respect of some of the information. He orders that information to be disclosed.

Background

1. The Authorisation referred to in the request is the *Equality (Transit Visa, Entry Clearance, Leave to Enter, Examination of Passengers and Removal Directions) Authorisation 2011*. The Authorisation came into operation on 10 February 2011.
2. The Authorisation enables the UK Border Agency (UKBA) to give greater scrutiny or priority to particular nationalities in carrying out entry clearance, border control and removals functions than it does to others.
3. The Authorisation covers two lists of nationalities: one relevant to Paragraph 3 of the Authorisation and the other relevant to Paragraphs 4 to 6. The nationalities covered by the Authorisation are reviewed each quarter by the UK Border Agency and submitted for ministerial approval.

The Request

4. The Commissioner notes that under the Act the UK Border Agency (UKBA) is not a public authority itself but an executive agency of the Home Office, which is the public authority responsible for the UKBA.
5. The complainant wrote to the UKBA on 22 February 2011 in relation to a Ministerial Statement of 15 February 2011 made by the Minister for Immigration, Damian Green. His request was:

"What is the current list of nationalities covered by the authorisation".

6. UKBA's response of 29 March 2011 withheld the requested information citing the exemptions in sections 27(1)(a) (international relations) and 31(1)(e) of the Act (law enforcement). The complainant was advised that if he was dissatisfied with the response, he could request an independent review by the Home Office.
7. The complainant requested an internal review on 6 April 2011. The Home Office upheld UKBA's decision in its internal review correspondence which it sent to the complainant on 6 May 2011.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 9 May 2011 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:

"I am still convinced that the information I requested should be in the public domain and that UKBA's reasons for refusal are illogical and without base".

9. The Commissioner notes that the complainant told the Home Office:

"by default, creating such a list cannot be non-discriminatory as if the list were to be non-discriminatory, the list would have to include every country in the world".

10. Although he is aware that the complainant has concerns about whether the requested information is discriminatory, it is not within the Commissioner's remit to consider the propriety of the information at issue. The scope of his investigation is with respect to whether the

Home Office dealt with the request for information in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). He has therefore considered the Home Office's citing of the international relations exemption and the law enforcement exemption in sections 27 and 31 of the Act respectively.

Analysis

Exemptions

11. The Home Office is relying on the exemptions in section 27 and 31 in relation to all the withheld information in this case. The Commissioner has first considered its citing of section 27.

Section 27 (international relations)

12. Section 27(1)(a) provides that information is exempt if its disclosure would or would be likely to prejudice relations between the UK and any other State. In other words, it focuses on the effect of disclosure rather than the nature of the information itself.
13. The Commissioner considers that international relations of the UK cover a wide range of issues relating to, for example:
 - UK policy and strategic positioning in relation to other states;
 - diplomatic matters between states;
 - international trade partnerships; and
 - consular matters in relation to UK citizens abroad or visitors to the UK.
14. In the Commissioner's view, prejudice under this exemption can be real and of substance if it makes international relations more difficult or calls for a particular diplomatic damage limitation exercise.
15. In considering the matter of prejudice, the Commissioner has followed the three-stage process as set out in his guidance.
16. In this case, he accepts that the relevant applicable interests are in relation to the countries which appear on the lists.
17. The Home Office submitted its arguments with respect to the effect of disclosure on the applicable interests. Having considered these arguments, and the withheld information, the Commissioner does not accept that the effect of disclosure will be detrimental or damaging in

relation to all of the countries listed. Accordingly, he does not find the exemption engaged with respect to those countries which, for the purposes of this Decision Notice, the Commissioner will refer to as the "non-detriment countries".

18. With respect to the entries where he does find the effect of disclosure detrimental or damaging - the "detriment countries" - the Commissioner accepts that disclosure of that information would be likely to have a prejudicial effect. The Commissioner therefore finds that the international relations exemption is engaged with respect to those countries. He has therefore gone on to consider the public interest test.

Public interest arguments in favour of disclosing the requested information

19. The Home Office recognised the public interest in disclosing the information:

"increasing the transparency of, and public confidence in, the work of the UK Border Agency and ensuring transparency and promoting disclosure of processes and policy making which may affect other countries".

20. Arguing in favour of disclosure, the complainant brought to the Home Office's attention a letter from the Immigration Law Practitioner's Association (ILPA) to the Immigration Minister. He quoted from the letter:

"Every immigration refusal carries with it a right of appeal on the grounds of race discrimination. To contest such appeals, the Agency would have to indicate that it were relying on the authorisation and thus the list will be revealed piecemeal, if it is not revealed earlier".

Public interest arguments in favour of maintaining the exemption

21. Arguing in favour of maintaining the exemption, the Home Office said that disclosure could adversely affect bilateral and multilateral relations. It also argued that disclosure may result in:

"negative repercussions for UKBA's work with the countries concerned on organised immigration crime and other migration issues and for the treatment of British citizens living or working in the countries concerned, or seeking to do so".

Balance of the public interest arguments

22. When balancing the opposing public interests in this case, the Commissioner is deciding whether it serves the public interest better to

disclose the requested information or withhold it because of the interests served by maintaining the relevant exemption.

23. In reaching his decision in this case, the Commissioner accepts that the requester has strong reasons for wishing to pursue the requested information. He also accepts that there is clearly a public interest in the accountability and transparency of the Home Office for the decisions it takes such as deciding which countries to include on the Authorisation's lists.
24. However, the Commissioner also considers that it is strongly in the public interest that the UK maintains good international relations. In this case, the Commissioner considers that the effective conduct of the UK's bilateral relations and international engagement in the sensitive issues surrounding migration and border security would be compromised if the requested information about the "detriment countries" were made known. He therefore finds the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 31 Law enforcement

25. As the Commissioner has concluded that the Home Office incorrectly applied the international relations exemption to the "non-detriment countries", he has gone on to consider the other exemption also cited by the Home Office with respect to that information.
26. The Home Office is relying on section 31(1)(e): that sub-section of the Act creates an exemption from the right to know if releasing the information would or would be likely to prejudice the operation of the immigration controls.
27. In correspondence with the complainant, the Home Office argued that disclosure would adversely affect its efforts to tackle organised immigration crime. It told him:

"If the lists were published, organised criminal groups could seek to make greater use in their criminal operations of nationalities – or of false documentation for nationalities – not on the lists as they might thereby receive lesser scrutiny from the UK Border Agency".
28. In support of this argument, the Home Office provided the Commissioner with information about the number of false document detections made at visa posts in the financial year 2010/11. However, it did not explain how these figures relate to the countries at issue in this case. Nor did it provide any convincing evidence in support of its argument about the risk posed to UKBA's work by organised crime groups as a result of disclosure.

29. The Commissioner accepts that UKBA is responsible for securing the UK border and controlling migration in the UK. However, he does not consider that the Home Office has demonstrated sufficiently how prejudice to the operation of the immigration controls would result from disclosure of the information under consideration. He therefore does not find the law enforcement exemption engaged. As he has reached this conclusion, it has not been necessary to go on to consider the public interest.

The Decision

30. The Commissioner's decision is that the Home Office correctly applied section 27 to the "detriment countries". However, he finds neither the international relations exemption nor the law enforcement exemption engaged with respect to the "non-detriment countries".

Steps Required

31. The Commissioner requires the public authority to provide the complainant with details of the "non-detriment countries" to ensure compliance with the Act. For the avoidance of doubt, these are listed in a Confidential Annex which will be provided to the Home Office only.
32. The public authority must take the steps required by this Notice within 35 calendar days of the date of this Notice.

Failure to comply

33. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 13th day of October 2011

Signed

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