



Home Office

Direct Communications Unit

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E-mail: public.enquiries@homeoffice.gsi.gov.uk Website: www.homeoffice.gov.uk

[Sent 22nd July 2009]

Ref: T10552/9

Dear Mr Mery

Thank you for your e-mail dated 23rd June 2009 in which you ask for the statistical information used to provide an informed background to creating the consultation 'Keeping the right people on the DNA database' and its annex in spreadsheet format.

I regret that we are unable to send you a full response to your request within 20 working days, as required by the Freedom of Information Act. This is because we are still considering your information request. I would like to apologise for this delay and for any inconvenience that this may cause. I would like to assure you that we are dealing with your request as a matter of urgency, and that we will send you a full reply as soon as possible. We now aim to send you a full reply by 11th August 2009.

If you have any queries about the handling of your information request in the meantime then please do not hesitate to contact me.

Yours sincerely,

Ami Badmus

Policing Powers and Protection Unit



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[Sent 7th August 2009]

david@gizmonaut.net

Reference: T10552/9

Dear Mr Mery

Further to my correspondence of 21st July 2009 regarding your information request dated 23rd June 2009, we are now in a position to provide you with a full reply to your request.

I can confirm that the Home Office holds information relevant to your request. However I am not obliged to disclose it to you. After careful consideration we have decided that this information is exempt from disclosure by virtue of section 35(1)(a) of the Freedom of Information Act. This provides that information can be withheld where its disclosure would prejudice the formulation or development of government policy. Section 35 is a qualified exemption and as such requires the conducting of a Public Interest Test (PIT) to balance the considerations favouring disclosure against those favouring non-disclosure. A detailed PIT consideration can be found in the annex to this response.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting your complaint within two months to the address below quoting reference CR12257.

Information Rights Team
Information and Record Management Service
Home Office
4th Floor, Seacole Building
2 Marsham Street
London
SW1P 4DF

Email: info.access@homeoffice.gsi.gov.uk

During the independent review the department's handling of your information request is reassessed by staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

I realise that you may be disappointed with this response. However we have considered the application of exemptions with great care in this case, and the Home Office always seeks to provide as much information as it is able to.

Yours sincerely,

Ami Badmus

Policing Powers and Protection Unit

Annex A

Section 35(1)(a) – The formulation and development of government policy

The Exemption

'35(1) – Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy'

Considerations Favouring Disclosure

Considerations which favour the disclosure of information covered by this exemption include the desire for openness and transparency in government. Release of this information could be said to encourage greater public involvement in the development of policy, thus increasing public participation in the political process and the level of public debate. An improved quality of debate should impact positively on policy outcomes, as proposals would have been subject to a greater degree of public scrutiny and discussion.

Considerations Favouring Non-Disclosure

The considerations favouring disclosure of this information must be balanced against those factors favouring non-disclosure. These include the protection of the integrity of the ongoing consultation process and the extent to which any public interest in disclosure can be satisfied by information already in the public domain.

The Home Office is currently undertaking a public consultation on this matter. It is in the wider interests of the policy formulation process that this is allowed to proceed with its integrity undiminished. The consultation process is designed to ensure that all parties with an interest in a particular matter of public policy are given equal opportunity to comment and raise questions before a decision is taken. All submissions made to the consultation process will be properly considered before a final decision is made on the retention of fingerprints and DNA. The release of additional information could diminish the integrity of the process because, for example, interested parties might feel they do not have sufficient time to consider all its implications.

A substantial proportion of the underlying statistics have been placed in the public domain, not least in connection with the current consultation itself. Given the degree and detail of information that has been published, it is our opinion that the release of the information requested would add little to the public interest arguments, that the public interest is sufficiently served by the information that is already in the public domain, and that the integrity of the consultation should take precedence.

For the reasons outlined above we are satisfied that the public interest in withholding this information outweighs the public interest in its release at this time.



Home Office

Information Access Team
Shared Services Directorate
2 Marsham Street, London SW1P 4DF
Switchboard 020 7035 4848

E-mail: Info.Access@homeoffice.gsi.gov.uk Website: www.homeoffice.gov.uk

Mr David Mery
David@Gizmonaut.net

Our Ref: 12257
Date: 15 September 2009

Dear Mr Mery,

I am writing further to my letter of 10 August 2009, regarding your request for an internal review.

I have now completed a full review of the handling of your request and of the reasons behind the decisions taken by the Home Office. This request has been treated on its own merits and all papers originally considered have been re-considered as part of the internal review.

The first part of my review concerned the procedural aspects of the handling of your case. Your request was received by the Department on 23 June 2009. Section 10(1) of the Freedom of Information Act states:

'a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

A final response was sent by the caseworker on 7 August 2009. This represents a period of 33 working days, between receipt of the request and the final response being issued, well over the twenty working day deadline specified in section 10(1) of the Act.

The twenty working day deadline is extendable by virtue of section 10(3) of the Act. This allows a public authority to extend the initial deadline when a qualified exemption is under consideration. The extension is given to allow the authority enough time to judge the relevant Public Interest Test (PIT) factors involved in the case. An extension can be made by sending the applicant a full extension letter, including notice of the qualified exemption(s) under consideration. This letter must be provided within the original deadline. A letter informing you of a delay in responding to your request was sent on 21 July 2009. Although this letter was sent on the twentieth working day following receipt of your request it did not contain any detail relating to a qualified exemption being under consideration. As such the failure to respond within twenty working days represents a breach of section 10(1) of the Act.

I apologise on behalf of the Home Office for this breach. We will remind the relevant caseworkers of their responsibility to deal with all requests on time and, where possible, within the 20 working day limit specified in the Act, notwithstanding any Public Interest Test (PIT) extensions that may be required.

The second part of my review concerned the substantive aspects of the response provided to you. Having reviewed this I am satisfied that it was correct.

In your request for an internal review you questioned the validity of non-disclosure under section 35(1)(a), with reference to the terms of section 35(2)(a) of the Act. Section 35(2)(a) states:

(2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded-
(a) for the purposes of subsection 1(1)(a), as relating to the formulation or development of government policy'


While you correctly point out that the consultation process has now concluded, the Government has yet to make a final decision on the policy that will be adopted. As a decision has not yet been taken, I do not believe that section 35(2)(a) is engaged. The use of section 35(1)(a) to withhold the requested information was therefore correct and in compliance with the requirements of the Act.

Section 35 is a qualified exemption and requires the conducting of a PIT to balance the considerations favouring disclosure against those favouring non-disclosure. A full PIT consideration can be found in the annex to this response.

Should you remain dissatisfied after this internal review you have the right of complaint to the Information Commissioner, as established by section 50 of the Freedom of Information Act. You can write to him at:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Bragaglia', with a horizontal line above it.

John Bragaglia
Information Access Consultant

Annex

Public Interest Test Considerations

Section 35(1)(a) – The formulation and development of government policy

The Exemption

'35(1) – Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) the formulation or development of government policy'

Considerations Favouring Disclosure

Considerations which favour the disclosure of information covered by this exemption include the need for openness and transparency. Release of this information could be said to have the effect of encouraging greater public involvement in the development of policy, thus increasing public participation in the political process and the level of public debate. An improved quality of debate should impact positively on policy outcomes, as proposals would have been subject to a greater degree of public scrutiny and discussion.

Considerations Favouring Non-Disclosure

The benefits of increased openness and transparency must however be balanced against those factors favouring non-disclosure. These include the need to ensure that decisions on government policy are not adversely affected by premature disclosure, the fact that a large amount of information relating to the background statistical data used is already in the public domain and the need to avoid undermining the integrity of the recently concluded consultation process.

Although the consultation process has now been concluded, release of the background statistical data before a final policy decision has been taken risks undermining such processes in future. The consultation process was designed in a manner which gave all interested parties sufficient time and information with which to provide a considered response. Now that the consultation process has closed it is right and proper that officials are given the time to review the responses received, in order to provide an informed recommendation to Ministers. The release of background statistical data prior to a decision being taken is likely to prejudice the free and frank manner in which such discussions should take place. It is in the public interest that officials are allowed the space in which to explore ideas and 'think the unthinkable' without fear that such deliberation would be prejudiced by the premature release of information. If policy discussions were to regularly take place in an environment where officials were not able to make a full consideration of all available options there would likely be detriment to the final policy outcome. This would clearly not be in the wider public interest.

It should also be re-iterated that a substantial proportion of the underlying statistics have already been placed in to the public domain, not least in connection with the consultation itself. Information placed in the public domain contained sufficient level of detail by which interested parties could make considered submissions. Releasing the full statistical package at this stage therefore serves little public interest.

Routine release of information protected by this exemption could also lead to a negative effect on the impartiality of the civil service. There would undoubtedly be a

greater risk of officials coming under political pressure not to challenge established ideas or orthodoxies. The quality of advice provided and its impartiality are hallmarks of the British civil service, releasing information which might harm this, would clearly not be in the public interest.

Clearly the release of information which could lead to a decline in the standard of policy discussion, and more generally, the policy making process is not in the public interest. Indeed, in its decision in the case of *'Export Credit Guarantees Department v Friends of the Earth (2008) EWHC 638'* the High Court acknowledged that many of the considerations against disclosure, referred to above, were *'at the heart'* of public interest considerations surrounding this class of information. The Court further found that cases in which it will *'not be appropriate to give any weight to (such) considerations will, if they exist at all, be few and far between'*.

For the reasons outlined above I am satisfied that the public interest in the continuing non-disclosure of the requested information outweighs the public interest in its release at this present time.