

Kathryn Denyer
Email: request-599861-63caceae@whatdotheyknow.com

10 June 2020

Dear Ms Denyer

Freedom of Information request (our ref: 55204): internal review

Thank you for your email requesting an internal review of the response to your Freedom of Information (FoI) request 55204. I apologise for the delay in providing you with a response.

You requested information on the Home Office B5JSSK guidance. Border Force responded stating that the information was exempt from disclosure under sections 31(1)(a) and (e) of the Freedom of Information Act. This relates to the prevention or detection of crime, and the operation of immigration controls. The full response can be found in **Annex A**.

In your request for an internal review you requested a redacted copy of the guidance if it was not possible to provide the document in full. You stated that the process for B5JSSK nationals was not clear and was causing confusion for individuals and representatives. The full text of your request for an internal review can be found in **Annex B**.

I have considered the original response provided and I have considered whether the correct procedures were followed. I confirm that I was not involved in the initial handling of your request.

Having spoken to Border Force, I understand that a redacted version of the guidance can now be provided to you and this can be found as a separate PDF attachment to this letter. Some information has been withheld on the basis that sections 31(1)(a) and (e) still apply; for the reasons stated in the original response.

I would also like to add that all visa applicants are subject to checks to determine their suitability to enter or remain in the UK. The results of these checks are fully considered by case-workers before a decision is made to

grant Leave to Enter, or Remain, in the UK. Where an applicant needs to demonstrate that they have not been absent from the UK for more than 2 years evidence of residence, that can be demonstrated by other means, such as:

- council tax letters
- letters confirming tenancy or mortgage payments
- electricity, gas or water bills
- letters from employers that confirm employment
- wage slips or P60s
- school, college or university attendance records
- letters that confirm registration with a doctor and/or dentist which also show dates of appointments

This list is not exhaustive.

More information can be found using the link below:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793574/No-time-limit-v14.0ext.pdf

I hope that this is helpful.

This concludes the review.

Yours sincerely

S John
Information Rights Team

Annex A – full response- FOI Reference : 55204

Home Office
2 Marsham
Street
London SW1P
4DF

Kathryn Denyer
Email: request-599861-63caceae@whatdotheyknow.com

Reference: 55204

Date: 24 September 2019

Dear Kathryn Denyer

FREEDOM OF INFORMATION REQUEST

Thank you for your e-mail of 20 September, in which you ask for the release of the Home Office B5JSSK guidance. Your request has been handled as a request for information under the Freedom of Information Act 2000.

Your information request and the Border Force response are set out below
Please disclose the B5JSSK guidance referred to at the top of page 19 of the UK Visas and Immigration Transit guidance published on 23 August 2019 at the below link:
<https://www.gov.uk/government/publications/transit-guidance>

I can confirm that the Home Office holds the information that you have requested. However, after careful consideration we have decided that the information is exempt from disclosure under section 31(1) (a) and (e) of the Freedom of Information Act. These sections provide that information can be withheld if its disclosure under the Act would or would be likely to, prejudice the prevention or detection of crime and the operations of the immigration controls, and the public interest falls in favour of maintaining the exemption.

Some of the exemptions in the FOI Act, referred to as ‘qualified exemptions’, are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in maintaining the exemption. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The ‘public interest’ is not the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole if the information is released or not. Transparency and the ‘right to know’ must be balanced against the need to enable effective government and to serve the best interests of the public.

The FOI Act is ‘applicant blind’. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

Considerations in favour of disclosing the information

The Home Office recognises that there is a general public interest in openness and transparency in all aspects of government. The release of the B5JSSK guidance would help in ensuring the public’s awareness in the United Kingdom’s methods of border control. This would help build greater public confidence in the policing and the operational procedures in place at our UK ports.

Considerations in favour maintaining the exemption

We have also considered the public interest in the duty to communicate information. We consider that if we were to disclose this information it would give criminals, terrorists and people smugglers access to information which would prove a threat to our ability to prevent and detect crime. The operation of UK immigration control would be jeopardised as the information contained in the guidance would offer hints and tips to criminals on how to circumvent the UK immigration controls.

There is clearly a strong public interest in doing everything we can to detect and prevent crime and protect the public at large. Disclosing the requested information would not be in the public interest as it could impact on the abilities of Border Force to ensure that the immigration rules are adhered to.

We conclude that the balance of the public interest lies in maintaining the exemption and withholding the information.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gsi.gov.uk, quoting reference 55204. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

Yours sincerely

H Reid
Border Force Information Rights Team

Annex B- Text of the internal review request received

-----Original Message-----

From: Kathryn Denyer [<mailto:request-599861-63caceae@whatdotheyknow.com>]

Sent: 30 September 2019 10:22

To: FOI Requests

Subject: 55204 - Internal review of Freedom of Information request - B5JSSK guidance

Dear Home Office,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Home Office's handling of my FOI request 'B5JSSK guidance'.

If it is not possible to provide the document in full, please can you provide a redacted version. The process for B5JSSK nationals is not currently published publicly in a clear form and is causing confusion for individuals and representatives, including in what circumstances a landing stamp may still be endorsed and what information the Home Office is holding that people may be able to request in the future to accurately note absences for indefinite leave to remain applications and how six months is calculated for visitors for the purposes of determining the date a visitor must depart the UK by. If any or all of this information is held in this document it would be very helpful to have it in the public domain.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.whatdotheyknow.com/request/b5jssk_guidance

Yours faithfully,

Kathryn Denyer

Annex C - Complaints Procedure

If you remain dissatisfied with the response to your FoI request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF