



**Director, Agency Records
Modernisation Programme**

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Dear Ms Barrett-Brown

Subject Access Requests under the Data Protection Act 1998

Thank you for your letter of 12 July in which you sought clarification as to UK Border Agency's role as Data Controller in respect of data held by detention centre contractors. I sincerely apologise for the delay in replying. I felt it appropriate to await the outcome of a relevant Home Office appeal (please see reference on page 4) before responding, but my office should have advised you of that and I am sorry that they didn't do so.

Responding in turn to each of the points you have raised:

1. You contend that the Agency is not in fact in control of the relevant data.

I disagree. The UK Border Agency met with the Information Commissioner's Office (ICO) in May 2011 to discuss the agency's relationship with its contractors at Immigration detention centres. The ICO agreed that the UK Border Agency remains the data controller for information processed at detention centres.

The ICO provides the following on their 'Key definitions of the Data Protection Act' web page.

'Data controller means ... a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.'

The ICO further clarifies the definition:

'A person is only a data controller if, alone or with others, they "determine the purposes for which and the manner in which any personal data are processed". In essence, this means that the data controller is the person who decides how and why personal data is processed. However, we take the view that having some discretion

about the smaller details of implementing data processing (ie the manner of processing) does not make a person a data controller.'

Applying this definition, it is clear to me that the UK Border Agency determines the purpose for which personal information is processed at our immigration detention centres, with contractors processing personal data solely on behalf of the Agency under our contractual agreements. Additionally, detention centres are operationally managed and directly overseen on a day-to-day basis by UKBA managers. Consequently, the Agency is the data controller for the records processed by the immigration detention centre contractors. In practice, this should provide a more streamlined service for your members as they will only be required to make one subject access request for all immigration data.

2.You suggest that the Agency's Information Management Directorate is unlikely to be familiar with the systems which contractors have for storing and processing data.

I can assure you that this is not the case. Since the development of the Agency's information assurance strategy following the Cabinet Office 'Hannigan' Review, all of our contractors now undertake reviews on their data handling and storage. These reviews are overseen by the Home Office's Departmental Security Unit in collaboration with the UK Border Agency's Information Management Team. Furthermore, follow-up audit visits are currently being scheduled with contractors to assess their practices and ensure they comply with the Governmental Security Policy Framework (available via the Cabinet Office website). Finally, as part of regular Information Management Team engagement with business units across the Agency, they will shortly visit Colnbrook IRC to assure the Information Management practices in place for both our offices and those of the contractor(s). The resulting Action Plan will be cascaded across the Detention Services Estate.

3.You state it is the experience of your members that personal data held by detention centre contractors is not disclosed in response to Subject Access Requests.

The Data Protection Unit (DPU) requests detention centre records as a matter of course as soon as a detention service reference is identified from the initial look at the applicant's immigration history upon receipt of the SAR. In fact, over half of the SARs we receive contain such a reference. DPU will chase contractors if they do not respond promptly to their request. I gather that 12 months ago this was not always the case but I would have hoped that your members would have seen a marked improvement certainly in the last 6 months. If there are individual instances where this is not happening, please encourage your members to write to the DPU, marked for the attention of Andy Bennett, the Head of DPU, requesting the case be reviewed on the grounds that immigration detention centre data is missing. I have asked Andy to monitor the number of complaints regarding missing detention centre data, to ensure the necessary action is taken and to report back to me in 3 months time with an update. We are always willing to improve our processes when we have clear evidence to show that something is not working as well as it could.

4.You are concerned that because an individual may have been detained at a number of different detention centres this will place a significant burden on the Agency's Information Management Directorate in terms of the data that has to be gathered in and disclosed to the data subject.

I accept that this is a significant burden on DPU resources but I believe it is fully justified in order to ensure that SARs are handled in full and consistent accordance with the Data Protection Act . It also enables us to identify and address any deficiencies in record keeping and information assurance standards across the agency and its contractors.

5.You assert that there are already significant delays at the Agency's Information Management Directorate and this additional burden is likely to cause further delays.

In 2009 the agency was not responding to the majority of SARs within the statutory 40 day deadline because of a continued and incremental increase in the volume of SARs being received and a backlog of 3,000 requests had built up. The decision was taken to divert additional resources to the unit with the end result being that we cleared the backlog in the summer of 2010 and were able to respond to 95% of the 400+ SARs being received each week, within target. We have maintained that level of performance and I can assure you that we monitor the few cases that cannot be responded to within target (because of the complexity or sensitivity of a case and/or the need to involve other agencies in agreeing to the appropriate disclosure of data), very closely. I have been very clear with the unit that where cases are significantly delayed that they keep the data subjects or their representatives informed as to when a response is likely to be issued and be as forthcoming as possible (bearing in mind that that of course some cases do have a national security consideration) about the reasons for the delay.

I am therefore very disappointed that the impression you have gained via some of your members does not appear to corroborate the performance that I can evidence. In the final paragraph to this letter I suggest that we should meet in order to explore some of these issues more fully and this is certainly one of them. DPU's performance is not purely about meeting statistical targets: the ICO has commended us on the quality of the responses we provide which is at the heart of what we aim to achieve. Every member of the unit is aware of our obligations under the DPA and genuinely want to be as responsive and helpful as they can and to know that our customers are satisfied. If that is not yet the perception that our major customers hold then I am most anxious we look to see how that can be addressed.

6 .You have asked the Agency to explain what its position is with regard to other contractors, such as overseas escorts.

The position is exactly the same as for our detention contractors.

7.You are also concerned that photographs and Closed Circuit Television evidence are not disclosed in response to Subject Access Requests

I can assure you that photographs are disclosed (not just because my managers have told me so but because I regularly sample disclosure bundles myself) and so your statement therefore surprises me. If you can reference me to some specific SARs where your members have said this has happened then I will gladly ask Andy Bennett to look into them.

CCTV footage is disclosed but this is only done when specifically requested. In order to identify the relevant footage, DPU need to know the precise date, time and location. The Unit would not conduct a general search for data that may or may not exist without that detail as it

would, as I am sure you will appreciate, be a very disproportionate use of resources. I am content that this approach is justified under s8 (2) (a) of the DPA 1998. In accordance with ICO guidance the Agency's process is to invite the requestor to view the specific CCTV footage at the relevant detention centre. If a hardcopy is still required, the requestor is invited to stipulate what footage is required. This process is in place to reduce the burden on the tax payer as the cost of redacting CCTV footage is approximately £300 + vat per 90 seconds. Interestingly I am not aware of any instance where representatives, having taken up our invitation, have then subsequently requested hardcopy of the footage.

7.You have suggested that a pro forma be produced so that personal data in the physical possession of contractors may be specifically requested by the data subject

I greatly welcome this approach. DPU does try to encourage representatives to make requests for very specific information/documents as this limits the amount of data that has to be collated and processed and inevitably speeds up our response time. If you are amenable, I will ask Andy to draw up a draft pro forma and send it to you for comment. DPU already has a pro forma that it uses to request data from detention centres, and as a result of your letter we have strengthened the wording on that and issued a reminder to all immigration detention centres reminding them of the data they are required to provide. The Information Management Team assurance activity at Colnbrook will further reinforce this message.

8.You have also expressed a further concern that UK Border Agency redacts staff names on a blanket basis.

Disclosures are considered on a case-by-case basis but there is a presumption that the names of staff in junior grades will not automatically be disclosed unless already in the public domain or there are other strong reasons in favour of disclosure, so I can see how it would appear that that there is a 'blanket basis'.

Since you wrote to me in July however, the Information Commissioner has expressed an opinion about the disclosure of UK Border Agency staff names in his Decision Notice of 9 August 2011 (Reference FS50377314 – Freedom of Information Act 2000 (Section 50)).The Home Office is appealing against this and until that process has run its course our policy will therefore remain as is.

9.Finally, you have asked the UK Border Agency to either confirm or disclose the guidance that is issued to caseworkers regarding the redaction of information.

All caseworkers receive training in the application of the Data Protection Act and the use of exemptions therein. We have provided a copy of our training material to the Information Commissioner as part of our recent voluntary audit. We always seek to improve the service we provide to our customers and review the training material on a regular basis.

I would like to thank you for bringing the concerns of your members to my attention and would be very happy to meet with you to discuss these issues further. In particular I believe there would be merit in helping DPU to develop a better relationship with those of your members who make large numbers of SARs to us on behalf of their clients. As I mentioned earlier, being able to home in on specific data required, would enable us to better apply our resources and provide a faster and potentially more helpful response than the voluminous

bundles we routinely supply. The Agency is moving towards online applications and electronic case records as you are aware, but we are keen to maximise any opportunity in the meantime to better manage our paper records and associated obligations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jill Beckingham'. The signature is fluid and cursive, with the first name 'Jill' written in a larger, more prominent script than the last name 'Beckingham'.

JILL BECKINGHAM