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IMMIGRATION DIRECTORATES' INSTRUCTIONS

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IMMIGRATION DIRECTORATES' INSTRUCTIONS**CHAPTER 24 SECTION 12****THE FREEDOM OF INFORMATION ACT AND REQUESTS FOR PERSONAL DATA****1. BACKGROUND**

The Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA) provide the public with information access rights so that they may request any information held by the UK Border Agency. The subject access provisions of the DPA have been in operation since 1 March 2000. These provisions allow individuals to access their own personal data, held by the UK Border Agency, upon payment of a £10 fee. Subject access requests are handled by the Data Protection Unit (DPU). However the right of access to all other information held by public authorities, under the FOIA 2000 came into full force on 1 January 2005. The FOIA affects the DPA in 2 key ways;

- It extends the right of subject access to all recorded information held by the UK Border Agency (requests handled by Data Protection Unit, DPU);
- It provides an exemption from the duty to supply personal data under the FOIA, directing such requests back to the DPA.

The purpose of this guidance is to outline the relationship between the DPA and FOIA and provide illustrations of what to do with certain FOI requests. More detailed guidance on FOIA can be found in chapter 25 of the IDIs. Staff should bear in mind that requests for information do not have to mention the legislation under which they are requesting that information.

2. REQUESTS FOR PERSONAL INFORMATION FROM THE INDIVIDUAL WHO IS THE SUBJECT OF THAT INFORMATION (THE "DATA SUBJECT") – SUBJECT ACCESS REQUESTS

All subject access requests will fall to be exempt from release under section 40(1) of FOIA. These requests are deliberately exempt from the provisions for the FOIA because they are already handled under the DPA regime. Generally there is no need to send out a letter exempting such requests from the FOIA under section 40(1). However, if the request specifically mentions the FOIA, staff should consider a response stating that the request has been refused under the FOIA section 40(1) but that we will handle the request under the provisions of the DPA. A standard template letter for such cases is at paragraph 5.1.

All subject access requests (i.e. any request for "all the information held by UKBA about me") should be sent to the DPU. Other simple requests for personal data should be passed to the appropriate Directorate to handle. Before any request for personal data is sent to the DPU, staff should consider

whether the request can be handled in their Directorate e.g. if the applicant has simply requested another copy of their RFRL. These simple requests for personal information are considered to be routine correspondence, therefore they can and should be handled in the Directorate which holds that information. In most cases this will be whoever has an applicant's file when the information is requested or, in the example of a telephone conversation, Immigration Enquiry Bureau. The DPU only handles requests for personal data from UK Border Agency customers in cases when the individual has made a request for **all** the personal data which the UK Border Agency holds about him/her **[see section 10 of this IDI]**.

2.1. Handling simple requests for personal data

When deciding whether it is appropriate to disclose the personal information which has been requested staff must consider several issues:

- whether the individual making the request is the subject of the personal information requested (subject to the provisions below in parts 2.2 & 3); and
- whether providing the information requested would jeopardise any investigations either by the UK Border Agency or any other Government department or national security **[section 10 contains guidance on DPA exemptions]**.

Generally, staff should not disclose the personal data of a living individual to anyone other than the subject of that data (subject to section 4 of this IDI). Staff should be satisfied that the individual making the request is the subject of the personal data. This may involve checking the signature/hand writing or address on the correspondence against the UK Border Agency file. If there is any doubt staff should contact the requestor and ask for further confirmation of identity; for example copies of a bill with the individual's name on it.

If there is any doubt about disclosing personal information staff should contact the DPU (0208 760 3720) or Information Access Policy Team (0208 760 4657) for advice.

3. HANDLING REQUESTS FOR INFORMATION FROM A THIRD PARTY ("THIRD PARTY REQUESTS")

Staff should consult section 4 of this IDI for guidance on handling requests from third parties as there are particular cases where it is the UK Border Agency's policy to disclose certain information to some third parties. Where it is the UK Border Agency's policy to disclose information to a third party and the third party has requested the information under FOIA, staff should explain that the information is not being disclosed under FOIA but has been disclosed

because the third party has a particular interest in the information. A standard template letter for such cases is at paragraph 5.2 of this IDI.

When refusing to provide personal data to other third parties under section 40 of the FOIA, staff should inform the UKBA Central FOI Team using the proforma located in **Annex A**.

4. HANDLING MIXED REQUESTS FOR INFORMATION

If a piece of correspondence contains a/several request(s) for information, the first question staff should ask is will the request fall in the main to be handled under the FOIA or the DPA? Where a request for information is received by UK Border Agency staff, which involves a mixture of personal and non-personal information, and falls to be dealt with under the FOIA and as a subject access request, a copy of the request should be forwarded immediately to the DPU team to handle. Staff should deal with the non-personal part of the request in the appropriate Directorate in liaison with the IAPT **[see chapter 25 of the IDIs for FOIA guidance]**.

Requests for information should always be considered on a case by case basis. Some examples of these are illustrated below with suggested guidelines for how to respond;

Q: *Why was my client refused ILR?*

Staff should simply provide a copy of the refusal letter, provided you are happy that requestor is the data subject or the legal representative of the data subject.

Q: *Please list full details of all sources of information used to decide my client's case.*

FOIA - Section 21 (information accessible by other means) should be used in this instance as information surrounding how our decisions are made is publicly available on the UK Border Agency website. There is no need for staff to actually state that section 21 applies unless the requestor specifically mentions FOIA. In responding to such requests staff should direct the requestor to the appropriate place on the website. However, if the requestor indicates that they wish to know how these resources were applied in relation to their applicant's case, this should be handled under the DPA provided that information is recorded on file.

Q: *I wish to see copies of all correspondence between the UK Border Agency and Ministers or their private offices concerning my client's case.*

This should be handled under the DPA by staff holding the information requested. The personal data relating to the applicant should be extracted from the correspondence if appropriate to do so (i.e. if only parts of the correspondence between UK Border Agency staff & Ministers relates to the applicant). Staff should consult with the IAPT in handling such a request.

Q: I wish to see the briefing note on my client's case which was submitted to the Senior Director before he signed the reply to the MP.

The briefing note (should one exist) may well include both personal data about the applicant **and** other non-personal information therefore the request would need to be divided and non-personal information considered under the FOIA, while the personal element handled under the DPA. Staff should consult with the IAPT for further advice as necessary.

Q: When was my letter of 2 August placed on my client's file? I wish to see a copy of the letter with the date stamp.

In releasing the requested information we are disclosing personal data about the applicant in the form of a copy of the letter and therefore the request would fall to be dealt with under the DPA. Prior to disclosing staff must be content that the representative has the applicant's consent to act on his/her behalf. If the requester was then to ask why it took so long for the letter to be responded to then the response would be non-personal and would need to be considered under the FOIA.

Q: I wish to have records of all movements of my client's file from the date of my letter onwards, supported by the file tracking record.

As above in responding to this request for information personal data relating to the applicant would be disclosed and therefore the request would need to be dealt with under the DPA. If the requester asked what file tracking system was used then the response would be non-personal and the FOIA would apply.

Q: What is the name of the caseworker dealing with my case?

The UK Border Agency policy is that staff details will not be released in response to an FOI request. This information may be exempt by virtue of sections 36 of FOIA. If not, then other FOIA exemptions may need to be considered [***see Chapter 25***]. Staff should consult with the IAPT.

Q: I would like to know what is happening with my case and also what is the UKBA policy for handling applications from students?

FOIA/DPA - staff should respond to such requests in line with the standard letter below (paragraph 5.2.).

5. STANDARD REPLIES

The following template letters may be used by staff as described above. Staff must tailor their response to the content of the request.

5.1. Template letter for use when a requester asks for their own personal information under FOIA and the request is handled under the DPA

I am writing in reply to your letter dated [INSERT DATE] in which you requested information about yourself under the Freedom of Information Act 2000 (FOIA).

This information can be accessed under the subject access provisions of the Data Protection Act 1998 (DPA). Your request is therefore exempt by virtue of section 40(1) of the FOIA. This exemption is for information which is already available under the provisions of the DPA.

If you are dissatisfied with the treatment of your request, you can ask the Department to conduct an internal review of its decision. This can be done by submitting your complaint to:

UK Border Agency
Complaints Unit
11th Floor, West Wing
Block 'C'
Whitgift Centre
Wellesley Road
Croydon
CR9 1AT

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

However this information is available to you under the DPA and therefore we [HAVE PROCESSED / WILL PROCESS] your subject access requests in line with the provisions of the DPA. [THE INFORMATION YOU HAVE REQUESTED IS ENCLOSED / IN ORDER TO PROVIDE THE INFORMATION YOU MUST SUPPLY PROOF OF YOUR IDENTITY AND A £10 CHEQUE MADE PAYABLE TO "THE ACCOUNTING OFFICER – HOME OFFICE" / WE WILL AIM TO DEAL WITH YOUR REQUEST WITHIN THE NEXT 40 CALENDAR DAYS].

Yours sincerely,

[Signature of staff member]
[Insert full name of staff member dealing with request]
[Insert Directorate]

5.2. Template for use in responding to requests for personal data from a third party where the requester has sighted FOIA and some information can be disclosed to the third party as per UKBA's policy on disclosure [see section 4 of this IDI]

I am writing in reply to your letter dated [INSERT DATE] in which you requested [INSERT DETAILS OF INFORMATION REQUESTED] under the Freedom of Information Act 2000.

It is the general policy of the UK Border Agency not to disclose, to a third party, personal information about another person. This is because the UK Border Agency has obligations under the Data Protection Act and in law generally to protect this information. Your request for personal information has been considered in line with the UK Border Agency's obligations under the Freedom of Information Act. However, it has been concluded that the information you have requested is exempt under Section 40(3) of that Act. Section 40(3) of the Freedom of Information Act provides that information can be exempt from disclosure if disclosure would breach any of the Data Protection principles. We have concluded that the information which you have requested would breach the first Data Protection principle and therefore we cannot supply the information you have requested.

If you are dissatisfied with the treatment of your request, you can ask the Department to conduct an internal review of its decision. This can be done by submitting your complaint to:

UK Border Agency
Complaints Unit
11th Floor, West Wing
Block 'C'
Whitgift Centre
Wellesley Road
Croydon
CR9 1AT

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

[The following paragraph can be included where we can provide some information to the requester outside of FOIA, see section 4 of this IDI]

However, although this information cannot be provided under the Freedom of Information Act, it is the UK Border Agency's policy to disclose some limited information to you because of your personal interest in the case of [INSERT NAME OF APPLICANT]. [STAFF TO INSERT THE INFORMATION THAT

CAN BE PROVIDED IN TO THE REQUESTER AS PER SECTION 4 OF THIS IDI]

Yours sincerely,

[Signature of staff member]

[Insert full name of staff member dealing with request]

[Insert Directorate]

5.3. Standard template letter for responding to mixed requests for personal information

Thank you for your letter dated [INSERT DATE] in which you asked for an update on the progress of your case and also for the policy on handling student applications [amend as appropriate].

Your query regarding the progress of your case has been passed to [INSERT NAME OF DEPARTMENT RESPONSIBLE FOR RESPONDING].

Your query regarding [INSERT DETAILS OF REQUEST] has been considered in line with the UK Border Agency's obligations under the Data Protection and Freedom of Information Acts. The policy for handling student applications for ILR is attached with this letter [amend as appropriate].

Yours sincerely,

[Signature of staff member]

[Insert full name of staff member dealing with request]

[Insert Directorate]

Annex A

TEMPLATE FOR NOTIFYING OUTCOME OF NON-ROUTINE FOI REQUESTS TO THE IND CENTRAL FOI TEAM

FOI Unique reference number: (if known move straight to part 2)
 (If the UKBA Central FOI team has not been notified of the request and it therefore does not have an FOI number, complete part 1)

Part 1

Name of Officer handling the request:	
Contact Details: Business Area Directorate Phone number	
Date request received in UKBA	
Details of Applicant Name: Organisation: Address Post code Phone number	
Subject of the request: Brief summary	

Part 2

Date of reply	Outcome: Answer those that are applicable
<u>Extent of disclosure:</u>	
Information released in full	
Information partially withheld:	
Information entirely withheld: (If info is partially or entirely withheld one or more of the 'reasons for withholding information' boxes below <u>must</u> be completed.	
One or more entire document(s) within a request withheld	
No Information was found:	
<u>Reasons for withholding information:</u>	
If exemptions were used, which one(s)?	
Neither confirm nor deny used on all of the	

Information:	
Neither confirm nor deny used on some of the of the information:	
Request exceeded fees limit	
The request was vexatious	
The request was repeated	
Request was unclear	
Further information:	
Number of pages of information that were considered, when processing the request:	