

**CHAPTER 24
SECTION 8****REQUESTS BY CURRENT OR
PROSPECTIVE EMPLOYERS****1. GENERAL**

It is not currently the UK Border Agency policy to disclose personal data about an applicant to a current or prospective employer. However, if an employer made a request for information about an employee under the Freedom of Information Act 2000 (FOIA) each request should be judged on its own merits *[see chapter 25 for detailed FOIA guidance]*.

1.1. OGD's, government agencies, local authorities and the police as employers

Section 3 to this IDI sets out the arrangements for the exchange of information with OGD's, agencies, the police and local authorities in most circumstances. Where these bodies are acting as current or potential employers, it may be necessary to disclose information to them for national security reasons or to prevent crime. Each request for information on this basis will be treated on its merits.

2. ASYLUM & IMMIGRATION ACT 1996: SECTION 8

Section 8 of the Asylum and Immigration Act 1996 makes it a criminal offence to employ a person aged 16 or over who is subject to immigration control if that person does not have current and valid permission to be in the United Kingdom or does not have permission to take the job in question.

Should an employer contact the UK Border Agency with queries about the right of individuals to take employment they should be directed towards the guidance issued to employers entitled "Changes to the law on preventing illegal working: short guidance for United Kingdom employers", or the more detailed guidance available from the Employers Helpline "Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working". The guidance makes clear that the UK Border Agency can only release information about a person's immigration status to an employer if written authorisation has been given by the individual concerned, or his authorised representative.

3. THE HELPLINE FOR EMPLOYERS

A helpline facility for employers with queries about section 8 of the Asylum and Immigration Act 1996 is based in the UK Border Agency in Sheffield. The helpline **does not normally** provide information about an individual's status

from Home Office records to an employer (except in specific circumstances set out in guidance locally). Employers should **not** be advised to call the helpline number (0845 010 6677) if it is clear that all they want is personal information.

It does **not** constitute a disclosure of personal information from our records to help an employer to understand a document that he has been shown by an applicant for a job. The helpline is able to deal with calls of this nature. Employers who want advice on documents can be advised to contact the helpline.

4. UNSOLICITED DISCLOSURE OF INFORMATION

In a small number of cases, information received from an employer may suggest that a person is working when they should not be. This may or may not involve a breach of their conditions of leave under section 10 of the 1999 Act, depending on whether the person has current leave or not. Such cases should be referred to the Local Enforcement Office (LEO) or Port to consider action under section 10.

If it appears that a local authority or OGD is employing an immigration offender it may be appropriate to inform the authority or department concerned. Such unsolicited information should only be shared after consideration on a case by case basis, and after consultation with the Local Enforcement Office. A decision to disclose information in these cases should be taken at SEO level or above. ***[See section 3 for further guidance on disclosures to other public bodies].***

5. STANDARD REPLY

A standard reply for use when declining to release information on an individual's immigration status to an employer is as follows:

"I am writing in reply to your letter dated [*insert date*] in which you requested [*insert details of information requested*].

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.

However, where the freely given and informed consent of the individual concerned has been given for personal data relating to them to be disclosed, the Home Office can respond to a request for specific personal information in writing. It should be noted that the Home Office does not currently hold a central register of foreign nationals who are permitted to work in the UK and there will be many people entitled to work here, such as EU nationals, on whom the Home Office will have no records.

Section 8 of the Asylum and Immigration Act 1996 is the law that relates to the

prevention of illegal working in the UK. If you wish to determine whether an individual has permission to work in the UK, you can establish a statutory defence against conviction by carrying out certain document checks for all new employees. Therefore, it should only be in exceptional circumstances that you would require further and specific confirmation from the Home Office to substantiate a potential employee's eligibility to take up employment in the UK. The attached guidance: "*Changes to the law on preventing illegal working: short guidance for United Kingdom employers*" has been produced by the Home Office to explain these changes, and provides employers with practical advice on what they should do to comply with these legal requirements.

Yours sincerely,

[Signature of staff member]

[Insert full name of staff member dealing with request]

[Insert Directorate]"