

FOIA and Migrants' Rights

Ollie Persey, Garden Court Chambers

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GARDEN COURT CHAMBERS



 @gardencourtlaw

Nuts and bolts of FOIA

- 1) Make a request for information.
 - I. Valid request (s.1(8))
 - I. in writing,
 - II. with applicant's name and can be on behalf of an organization-
this means that another individual can pursue onwards requests.
 - III. Request for information held by public authority
 - IV. Address for correspondence
 - II. NB list of public authorities in schedule of FOIA



Grounds for refusal

1) Cost (s12):

- 1) £600 hard limit for central government and £450 for most other public authorities.
- 2) Can aggregate requests by an individual or those appearing to act 'in concert'
- 3) Public authority can rely on its own poor record keeping: *Cruelty Free International v Information Commissioner* [2017] UKUT 318 (AAC).

2) Vexatious request (s14)



Qualified exemptions

- 1) Future publication (s22)
- 2) Risk to international relations (s27)
- 3) Law enforcement (s31) (including immigration control)
- 4) Formulation of government policy (s35)
- 5) Personal information (s40)



Future publication

- 1) At the time of the request, did the public authority hold the disputed information with a view to its publication at some future date (whether determined or not)?
- 2) If so, is it reasonable in all the circumstances that the information should be withheld from disclosure until that future date?



Formulation of government policy, etc.

- 1) Formulation of government policy- what about implementation?
- 2) 'Relates to'- loose test?



Challenging refusals

- 1) Internal review
- 2) Complaint to ICO
- 3) Appeal



The EUSS Policy Equality Statement

1. 11 June 2019, Caroline Nokes MP, the Immigration Minister in response to a Parliamentary Question stated that the Policy Equality Statement to the EUSS would be “published shortly”.
2. 17 July 2019, Caroline Nokes MP: “a copy of the PES to be placed in the Library” shortly.
3. 28 August 2019, Chai Patel (“CP”) on behalf of JCWI requested an “unpublished Policy Equality Assessment” for the EU Settlement Scheme (EUSS).
4. 19 September 2019, SSHD replies confirming that it held “a” Policy Equality Statement (“PES”) for the EUSS but relied on s22(1) FOIA (information intended for future publication).
5. CP requested an internal review (“IR”). SSHD maintained its refusal based on s22(1)
6. 17 December 2019, CP complained to the Information Commissioner.
7. 22 July 2020, the Information Commissioner determined that the exemption was not engaged and required the SSHD to disclose the requested information.
8. 18 August 2020, the SSHD challenged the Information Commissioner’s adjudication. In addition to reliance on s22(1) it also sought to rely on s35 (formulation of government policy). It further pleaded ss27 (international relations) and 31 (law enforcement) in relation to parts of the disputed information concerning immigration control.
9. Information Commissioner resisted the appeal on 21 October 2020
10. SSHD publishes the “November 2020” PES.
11. JCWI delivered a response to the appeal on 3 March 2021.
12. Hearing, part open and part closed 26-27 July 2021 and Tribunal completed deliberations 28 July 2021.
13. 22 May 2019 version released 7 September 2021



Tricks and tips

- 1) Make use of the [FOIA Code of Practice](#)
- 2) FOIA relates to information not documents
- 3) Pre-empt the exemptions
- 4) Make the most of the advice and assistance duty (s16)
- 5) Look for “wins” in refusals
- 6) Look for other FOIA requests on whatdotheyknow
- 7) “How else can I get this information”?



Thank you

020 7993 7600

| info@gclaw.co.uk

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