

## **Freedom of Information Act 2000 (Section 51)**

### **Information notice**

**Date:** 26 June 2023

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### **Section 51**

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Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

#### **Application under section 50**

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1. The Commissioner has received an application under section 50, reference IC-208115-F4Z1, for a decision whether a request for information made by the complainant to the Home Office on 23 August 2022, has been dealt with in accordance with the requirements of Part I of the Act.

## Nature of complaint

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2. On 23 August 2022, the complainant made the following request for information under FOIA:

"We request the following information under the FOIA, in relation to Emergency Travel Documents from Eritrea.

1. How many Emergency Travel Document ('ETD') requests for Eritrea were submitted in:

- (a) 2019
- (b) 2020
- (c) 2021 (to date).

2. How many ETDs for Eritrea were issued in:

- (a) 2019
- (b) 2020
- (c) 2021 (to date)

3. How many Foreign National Offenders from Eritrea were granted ETDs in:

- (a) 2019
- (b) 2020
- (c) 2021 (to date)

4. How many of the people referred to in (3) were subsequently removed?

5. How long on average did it take from the date of application for the document to be issued, for applications made in:

- (a) 2019
- (b) 2020
- (c) 2021 (to date)

6. How many ETDs were issued for people deemed not to be co-operating with the ETD process in

- (a) 2019
- (b) 2020
- (c) 2021".

3. On 8 September 2022, the Home Office responded. It refused to provide the requested information, citing section 27(1)(a) (International relations) and section 31(1)(e) (Law enforcement) of FOIA.
4. On 26 September 2022, the complainant requested an internal review.

5. On 20 October 2022, the Home Office provided an internal review. It maintained its position.
6. On 20 December 2022, the complainant wrote to the Commissioner to complain about the response.
7. On commencing his investigation, the Commissioner became aware of a related request. In that case, reference IC-155297-G9B7<sup>1</sup>, the request was for similar information, regarding Iran. This resulted in an appeal to the First-tier Tribunal (FTT), reference EA/2022/0192, which was resolved by way of a Consent Order.
8. The Commissioner raised a query regarding that appeal with the complainant and, on 27 April 2023, he provided the Commissioner with a copy of what was disclosed by the Home Office.
9. In light of this, the Commissioner considered that there was a realistic chance of informally resolving this complaint through voluntary disclosure by the Home Office, and that a full investigation might not be necessary. He therefore wrote to the Home Office on 2 May 2023, asking it whether it was prepared to disclose the requested information.
10. Having received no acknowledgement or response, on 5 June 2023, the Commissioner contacted the Home Office again. The Home Office acknowledged this and said that it would provide a response as soon as possible, although it suspected that "it will not be a simple informal resolution". The Commissioner therefore asked it whether or not he should commence a formal investigation. On 8 June 2023, the Home Office indicated that this was its preferred option.
11. On 8 June 2023, the Commissioner wrote to the Home Office raising formal enquiries. In view of the delay, he required a full response within 10 working days. A response remains outstanding.

### **Information required**

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12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the Home Office shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4025223/ic-155297-g9b7.pdf>

13. The Home Office is required to respond to the email which the Commissioner sent to it on 8 June 2023, namely:

"The complainant wishes to challenge the application of exemptions to refuse the request.

It is noted that, a previous complaint IC-155297-G9B7 (FTT reference EA/2022/0192) for similar information in respect of Iran, was resolved by way of a Consent Order. It was hoped that this request would have a similar outcome in respect of disclosure. Please explain why this is not the case.

In any event, I need the following information from you to reach a decision.

- A copy of the withheld information (clearly marked to show where each exemption cited has been applied).

- Please answer the following questions

### **Section 27 – international relations**

Please confirm which sub-section(s) of 27(1) you are relying on to withhold the information that has been requested and furthermore please provide a clear explanation which sets out why disclosure of the information would, or would be likely to result in the prejudice a particular sub-section is designed to protect.

Please ensure that you provide evidence which demonstrates a causal relationship between disclosure of the information that has actually been requested and any prejudice which may occur.

Please specify the level of likelihood being relied on, i.e. would or would be likely to prejudice.

Please add any further public interest arguments that you would like to rely on.

### **Section 31 – law enforcement**

You have cited 31(1)(e).

Please clearly explain why disclosure of the information would prejudice, or be likely to prejudice the operation of the immigration controls.

Please ensure that you provide evidence which demonstrates a clear link between disclosure of the information that has actually

been requested and any prejudice which may occur.

Please specify the level of likelihood being relied on, i.e. would or would be likely to prejudice.

Please add any further public interest arguments that you would like to rely on.

I strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate our approach to the exemptions and procedural sections of the FOIA. These can be found on our website.

If you decide to apply a new exemption, you should inform the complainant of your revised position and let me have answers to the questions in respect of the corresponding exemption, which can be found at: <https://ico.org.uk/for-organisations/key-questions-for-public-authorities-foi-act-2000/>

For the avoidance of doubt, you should now do the following.

- Consider whether to change your response to the information request, and let me know the outcome.
- Send me the withheld information.
- Send me your full and final arguments as to why you think the exemptions apply.
- Answer all of the questions in this letter".

## **Failure to comply**

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14. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

## Right of appeal

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15. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [grc@Justice.gov.uk](mailto:grc@Justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

**Signed .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**