

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2023

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

Decision (including any steps ordered)

1. The complainant has requested the names and licence numbers of all organisations authorised to issue Certificates of Sponsorship for overseas workers coming to the UK. The Home Office referred the complainant to a list of sponsors which was in the public domain. However, it said that the individual licence numbers were exempt from disclosure under section 31(1)(e) (Law enforcement) of FOIA.
2. The Commissioner's decision is that the Home Office was entitled to rely on section 31(1)(e) of FOIA to refuse to disclose the individual licence numbers.
3. The Commissioner does not require any steps as a result of this decision.

Request and response

4. On 14 September 2022, the complainant wrote to the Home Office and requested information in the following terms:

"I would like a list of the Sponsors name and the Sponsors licence number of all organisations authorised to issue Certificate of Sponsorship for work visas in the UK."

5. The Home Office responded on 26 September 2022. It advised that sponsors' names were already in the public domain, citing section 21 of FOIA and providing a link to a list on the GOV.UK website. It applied section 31(1)(e) of FOIA to withhold sponsors' licence numbers, on the grounds that disclosure would prejudice the operation of the UK's immigration controls. It maintained this position at internal review.

Reasons for decision

Section 31 – Law enforcement

6. Section 31(1)(e) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the operation of the UK's immigration controls.
7. The Commissioner's guidance on the exemption¹ states that it will be engaged if disclosure would, or would be likely to, prejudice physical immigration controls at points of entry into the UK. It could also protect information about issuing and approving work permits and the processing of asylum applications.
8. In its internal review, the Home Office stated that disclosure "would prejudice" the operation of the immigration controls. However, it has relied on arguments which are more aligned with a position that disclosure "would be likely" to cause prejudice, by referring to harm that "could" or "may" occur. Therefore, that is the test that the Commissioner has applied here.
9. The Commissioner's guidance on the prejudice test² states that "would be likely to prejudice":

"...means that there must be more than a hypothetical or remote possibility of prejudice occurring; there must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%".
10. The question for consideration here is, therefore, whether the disclosure of the withheld information (the individual sponsor licence

¹ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

² https://ico.org.uk/media/for-organisations/documents/1214/the_prejudice_test.pdf

number for each, named, organisation authorised to issue Certificates of Sponsorship for work visas in the UK) would be likely to result in prejudice to the operation of immigration controls.

11. Although there are some exceptions, when employing someone from outside the UK, eligible employers will normally need to obtain a sponsor licence³. They must supply detailed supporting information, specify the type(s) of licence required and pay a fee. If their application is successful, they are given a unique sponsor licence number and they can assign individual Certificates of Sponsorship to eligible workers, as required. The sponsor licence number is therefore a key piece of information by which they identify themselves, both to the UK government and to prospective employees from overseas, looking for genuine employers⁴.

12. The Home Office told the complainant:

“...disclosure of the information would prejudice the operation of the immigration controls. Disclosure of the specific reference number for the licences could be misused by persons wishing to circumvent the appropriate methods of entry to the UK.”

13. The sponsorship system creates a legal framework for managing workers coming to the UK from overseas, and it also helps overseas workers to protect themselves from fraud and exploitation by helping them to identify genuine UK job offers with employers that are officially registered and authorised to offer them work, legally.

14. If the unique reference number of individual sponsors was disclosed, the Commissioner accepts that this information could be used by criminals intent on circumventing the normal controls for people entering the UK. Knowledge of a unique sponsor licence number (which, as far as the Commissioner has been able to ascertain, is not information which is currently in the public domain) would be likely to add credibility to fraudulent attempts to imitate genuine employers. Fake Certificates of Sponsorship, created by someone impersonating a genuine sponsor, could assist people to enter the country illegally. They could also trick genuine applicants from overseas into being exploited by criminals or into accepting work with unscrupulous UK employers operating outside of the law. More resources might have to be diverted into identifying and combatting

³ <https://www.gov.uk/uk-visa-sponsorship-employers>

⁴ <https://www.gov.uk/government/publications/frauds-tricks-and-scams/fraud-tricks-and-scams>

instances of fraud, which could have knock-on effects for the overall efficiency of the UK's immigration controls.

15. The Commissioner accepts that the disclosure of information which could assist criminals to impersonate genuine sponsors would be likely to prejudice the UK's immigration controls. He also accepts that there is a causal relationship between disclosure and the prejudice the exemption protects, and that it is real and of substance. The Commissioner is therefore satisfied that the exemption is engaged at the lower level of prejudice.

Public interest test

16. Section 31 is a qualified exemption. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31 of FOIA outweighs the public interest in disclosing the information requested by the complainant.
17. In reaching a view on where the public interest balance lies in this case, the Commissioner has taken into account the views of both the complainant and the Home Office, as well as factors that apply in relation to the information in question.
18. The complainant has expressed concern that by refusing to disclose this, and other information he has requested on related matters, the Home Office: "...are effectively giving these sponsors immunity from the Equalities Act because without knowing the number of work visas they are issuing no further interrogation is possible". His concern therefore appears to lie with the welfare and fair treatment of overseas workers.
19. This must be balanced against the credible concern that the disclosure of the information may result in overseas workers who are trying to come to the UK legally, being more likely to fall victim to fraudsters who are able to convincingly impersonate legitimate employers.
20. The Home Office told the complainant:

"Although there is a public interest in releasing information which increases transparency in the handling of sponsorship applications, balanced against this is the public interest in safeguarding the government's ability to avoid fraudulent use by persons wishing to resort to illegal methods of entry by misusing sponsorship licence details."

21. It also said:

“If the information was released it could impact the Home Office’s effectiveness to process sponsorship applications and could lead to a rise in fraudulent applications. It may also give way to a lack of confidence in the sponsorship process from those that have applied with sponsors in the UK with genuine intent.”

22. When considering whether the public interest favours maintaining the exemption or disclosing the withheld information, the Commissioner accepts that it is important for the general public to have confidence in the UK’s law enforcement capabilities in connection with its immigration control systems. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
23. He also recognises that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest in avoiding prejudice to the operation of the UK’s immigration controls.
24. In the context of this case, the Commissioner recognises the public interest in preventing people who are intent on circumventing the UK’s immigration controls (either themselves or on behalf of others) from having access to information which could help them to do so. He also recognises the public interest in conserving public resources and in not leaving the immigration controls vulnerable from disclosures which could result in significant, burdensome work. The disclosure of any information that would assist those wishing to commit unlawful activities and circumvent immigration controls, would therefore clearly not be in the public interest.
25. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of maintaining the exemption outweigh those in favour of disclosure. The Commissioner is therefore satisfied that section 31(1)(e) of FOIA was appropriately applied in this case.

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

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

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Samantha Bracegirdle
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Wycliffe House
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SK9 5AF