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November/08

**IMMIGRATION DIRECTORATES' INSTRUCTIONS****CHAPTER 24  
SECTION 3****DISCLOSURE OF PERSONAL DATA  
TO PUBLIC BODIES****1. INTRODUCTION**

This guidance relates to requests for personal data from the UK Border Agency by outside bodies including other public bodies and members of the public, but it can also be applied when the UK Border Agency is seeking data from others.

**2. DISCLOSURES TO AND BY PARTICULAR PUBLIC BODIES****2.1. UKBA Policy**

As set out in section 1 of this chapter, where a request for personal information is received from another public body (such as another government department, the police or a local authority), the general policy is that the UK Border Agency will comply with the request when it is lawful to do so.

**2.2. Legal and practical considerations**

This section sets out some of the practical arrangements, which should be applied when handling requests by and disclosures to, and making requests of particular public bodies. It also looks at how some of the legal considerations apply in the context of disclosures to particular public bodies.

**In determining whether a disclosure to an OGD will be lawful, you will need to have regard to the Human Rights Act 1998, the Data Protection Act 1998, the law of confidence and the administrative law requirement that public bodies must act within the limits of their powers. These considerations are all laid out in section 1 of this IDI.**

When requesting information from another body you will need to provide sufficient information to enable that body to determine that the disclosure would be permitted under the DPA, in particular which condition in Schedule 2 would be met and, if sensitive personal data are requested, also which condition in Schedule 3 would be met. You should therefore explain to the other body why the UK Border Agency is seeking the data from them, and why the UK Border Agency considers the data requested to be necessary for the specified purpose or function. For example, where the UK Border Agency needs the data for the exercise of its statutory functions in relation to immigration control and nationality, you should state this, specify the particular statute and provisions which sets out those functions and, where it is not immediately apparent, provide a brief explanation of how the data requested will assist the UK Border Agency in performing those functions. ***[For more detail about these legal considerations see section 1]***

**2.3. Information provided to UKBA in confidence by an OGD**

There will be instances when personal information is passed to the UK Border Agency in confidence by an OGD and the UK Border Agency then receives a request for that information under the Freedom of Information Act (FOIA). Information provided “in confidence” by OGDs is liable to disclosure under FOIA because there is no exemption for such information **[see chapter 25 for more detail on FOIA]**.

UK Border Agency staff should consult the originating department prior to making any decision to disclose. However, if the OGD refuses to give consent this does not mean that we cannot release the information being requested. Conversely, consent from the OGD does not mean that we can disclose this information automatically. Staff must still consider the Data Protection and Human Rights Acts prior to releasing this information (there are exemptions for this within FOIA). If doubt exists in any particular case then you should refer the matter to a senior caseworker for a decision and seek further guidance from Information Access Policy Team (IAPT, 0208 760 4657). **[See chapter 25 for further guidance]**.

### 3. THE POLICE

The police will generally be seeking information for the police purposes defined in Section 21 of the Immigration and Asylum Act 1999. **[For definition of “police purposes” see section 1]**. That section ensures that the UK Border Agency has the legal power to provide information to the police, for use for police purposes.

It should be noted that section 29 of the DPA provides for a specific exemption from some of the provisions of the DPA for personal data processed for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders, where the application of those provisions would be likely to prejudice any of these matters **[For more detail about section 29 of the DPA see section 1 of this chapter]**. Care must be taken when seeking to rely on this exemption, which must be considered on a case by case basis.

#### 3.1. Handling Requests

When a request for information is received from the police, the “call-back” procedure should, wherever practical always be followed and applicant’s files should be clearly minuted with the name, rank, location and telephone number of the enquirer. **[For guidance on handling telephone requests from the police see sections 2 & 3]**

If the enquiry is non-urgent then the officer should be asked to make their request in writing giving full details of what information is required and why it is needed. All police officers have access to standard Data Protection forms, which should be completed stating any relevant statutory provisions. Usually the police can be expected to refer to section 21 of the Immigration and Asylum Act 1999 and/or section 29 of the DPA. This request can be faxed to us and the response made by either return fax or telephone call. Details of the call should be recorded on the applicant’s file if possible, or a copy of the DPA form retained by the responding officer.

When the police request access to files, HEO approval must first be obtained before such access is permitted. Where the HEO is in any doubt about allowing access, he or she should consult IAPT for advice.

If it is not apparent in the first instance exactly what information on a particular file may be germane to the investigation in question, you should seek further information from the police before disclosing anything.

If a decision has been made to provide the police with access to our files, a written undertaking that copies of papers and/or the information they contain will not be further disclosed by them to a third party should be obtained from them before access is granted. In addition, they should provide a written undertaking to notify us if any of the documents or information is likely to be produced in the course of legal proceedings.

Files must only be made available to the police under supervision by a member of staff from E&E, a local enforcement officer or an officer from INDIS. Specific arrangements will be made on a case by case basis for police access to UK Border Agency IT systems. For further advice on this contact IAPT.

There will be instances when the police require documents from a file. The request for documents may suggest (or seek to prescribe) the form which your response should take, and it may be convenient for you to respond in this way. However, you do not have to be restricted to this. Whilst you should be as helpful as you can to the originator of the request, there may be good reason why the response cannot take the requested form. Possible forms of response include:

- (1) sending copies of all documents which have been identified as being germane to the request or to the matters under investigation, or
- (2) inviting the originator of the request to examine the documents identified, if necessary, subject to certain conditions (e.g. security measures) being satisfied, or
- (3) describing any information and/or documents you have identified (without disclosing the information itself) so that the originator of the request can assess whether or not it is likely to be germane.

Special arrangements are in place for police access to the UK Border Agency fingerprint systems. For more information contact IAPT.

#### 4.    **HM REVENUE & CUSTOMS (HMRC)**

HMRC was created in 2005 when HM Customs & Excise (C&E) merged with the Inland Revenue (IR). Until recently the UK Border Agency relied on separate legal powers which permitted staff in the IR and C&E to share information with the department. The UK Borders Act 2007 consolidated C&E and IR's existing information sharing powers into a single, wider power to permit HMRC staff to share information with the UK Border Agency for specific purposes.

Section 21 of the Immigration and Asylum Act 1999, however, is unchanged and provides the legal power for the UK Border Agency to provide information to HMRC for use for "Customs purposes" **[section 1 of this IDI]**. The UK Border Agency can otherwise rely on its common law powers to share information with HMRC, subject to the conditions of the Data Protection and Human Rights Acts **[section 1 of this IDI]**.

In the majority of cases HMRC will be seeking information from the UK Border Agency in relation to the investigation of criminal offences. The exemption at section 29 of the DPA may therefore be relevant, but as mentioned above care must be taken when seeking to rely on this exemption, which must be applied on a case by case basis. In particular, the requirement to meet a condition under Schedule 2 of the DPA (and possibly also Schedule 3) must always be met even if an exemption applies (other than the s28 national security exemption). In respect of practical arrangements, enquiries from HMRC should be dealt with in the same way as police enquiries.

The function of the immigration officer is to determine whether a person may be given leave to enter and he should not make a specific attempt to obtain information about possible tax evasion unless this is relevant to his enquiries under the Immigration Act. Where such information is obtained, however, the immigration officer should note, if possible, the details of the person's employer, his works number or his income tax reference number and his private address. This information may be passed directly to HMRC at:

National Intelligence Unit  
Intelligence Group  
2<sup>nd</sup> floor, Mitchell House  
Bristol, BS1 6BG



#### 4.1.    **The Anti-Terrorism Crime and Security Act 2001**

The Anti-Terrorism Crime and Security Act 2001 ensures that any statutory or other restriction on disclosure does not prevent the disclosure by HMRC of information for certain purposes including commencing, conducting and discontinuing criminal investigations and proceedings, provided that the making of the disclosure is proportionate to what is sought to be achieved by it. The process for making requests for information under ATCSA is also covered in the Memorandum of Understanding (MoU) between HMRC and the UK Border Agency.

#### 4.2.    **Section 40 of the UK borders Act 2007**

Section 40 of the 2007 Act consolidates the two existing powers for HMRC to share information with the UK Border Agency. Section 40 sets out the specific purposes for which HMRC officials can now share information with the UK Border Agency.

All information received from HMRC is now subject to a statutory duty of confidentiality (section 41 of the 2007 Act) and wrongful disclosure of HMRC information is a criminal offence (section 42 of the 2007 Act). Staff can be individually prosecuted for breach of the new statutory duty of confidentiality attached to HMRC information. Conviction for wrongful disclosure of HMRC information carries a maximum penalty of up to 2 years imprisonment and an unlimited fine. For this reason there are special handling procedures for HMRC information **[see section 1 & MoU]**. However there are certain circumstances in which staff may still disclose HMRC information e.g. where necessary for an immigration appeal. **[For more details on this gateway & criminal penalty see section 1 of this IDI]**

These new powers were commenced on 31 January 2008.

The UK Border Agency has entered into an MoU with HMRC which sets out the processes for sharing information between our two departments. That MoU can be found at <http://horizon/ind/foi/dpa.asp>

### 5.    **DEPARTMENT FOR WORK AND PENSIONS (DWP)**

#### 5.1.    **Partnership Agreement between UKBA and the DWP**

From April 1<sup>st</sup> 2002 the Department of Social Security (DSS) ceased to exist and with it the Benefits Agency. The Department for Work and Pensions (DWP) was created and encompasses JobCentre Plus (subsuming the old Benefits Agency and Employment Service) and the Pension Service.

The UK Border Agency has now signed a Partnership Agreement (PA) with the DWP which details information which can be shared between our respective Departments. The PA can be found at <http://l01hm020/ind/foi/iat.asp?oi=05-09-02>. Staff should use the process detailed in the PA when making requests for information from DWP. Likewise DWP requests for information from the UK Border Agency should be directed to BES Evidence & Enquiry (Lunar House) as detailed in the agreement. Enquiries from agencies within the DWP (e.g. Child Support Agency) are directed to either (BES E&E, see above).

DWP contacts specified in the guidance should be able to access information on behalf of the UK Border Agency from any of the DWP agencies. Approaches should not be made directly to other agencies unless caseworkers have been advised to do so by those DWP contacts.

## **6.      DEPARTMENT OF HEALTH**

Obligations of medical confidentiality prevent the disclosure of patient information by the NHS and/or by other medical practitioners to third parties. As a general rule it is not therefore possible for UK Border Agency caseworkers to have access to patient information without the specific consent of the patient.

On occasion requests will be received from the NHS for information from UK Border Agency records to assist in determining whether or not an individual should be liable to charging for treatment. The information disclosed should be limited to that which is necessary to enable the NHS to determine the individual's liability to charging, i.e. their status in the UK. The NHS should contact Evidence and Enquiry on 0208 604 4304 for clarification of what documents mean in terms of immigration status.

## **7.      OFFICE FOR NATIONAL STATISTICS (ONS)**

### **7.1.    Information from Registrars concerning suspect sham marriages**

Section 24 of the Immigration and Asylum Act 1999 places a statutory duty on Registrars to report marriages which they have reasonable grounds for suspecting to be a sham. For England and Wales the reports are submitted to the UK Border Agency Intelligence Section (INDIS) and copied to the General Register Office.

In this connection, a registrar, or the ONS on their behalf, may contact the UK Border Agency for information to establish the details of an individual's identity if they suspect a sham marriage. In such cases it may be appropriate to disclose this information to them, however each case will need to be considered on its own merits, taking into account in particular the requirements of the DPA. The exemption at section 29 of the Data Protection Act 1998 may be relevant in some cases. (A sham marriage is an offence against the Marriage Act 1949 as amended by the Marriage Acts of 1970, 1983 and 1994). All such enquiries should be directed to Business Enquiry Service, Evidence and Enquiry (BES E&E) in writing.

## 7.2. When Caseworkers contact ONS direct

Caseworkers should contact ONS direct in cases where there is **documentary** evidence of perjury and/or bigamy. Oral and written statements given to immigration officers are **not** accepted by ONS as evidence of a previous marriage. Acceptable evidence that a previous marriage has taken place includes a British Marriage Certificate, a statutory declaration by a head of family, a copy of the registration of a marriage or a letter from an Embassy or High Commission certifying that a marriage has taken place. When notifying ONS, caseworkers should include the following information for both bride and groom:

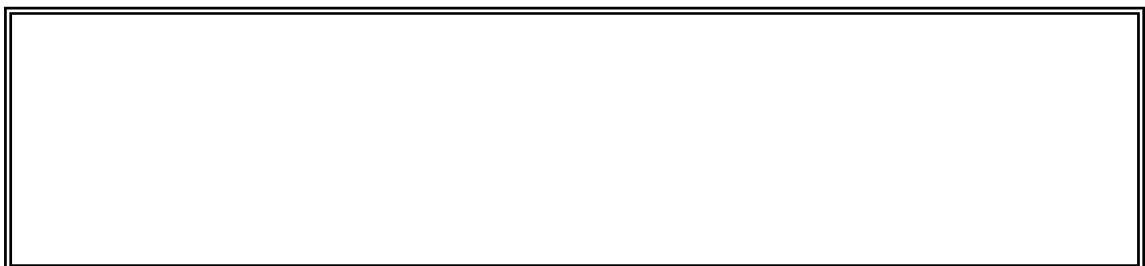
Name,  
Date of Birth,  
Nationality,  
date of Entry,  
dates of subsequent travel,  
whereabouts of previous spouse prior to divorce,  
current address,  
details of circumstances which justify referral to ONS, and  
photocopies of the documentary evidence to the relevant office:

Marriages and General Section  
ONS  
Smedley Hydro  
Trafalgar Road  
Birkdale  
Southport PR8 2HH

The Registrar General  
General Register Office for Scotland  
New Register House  
Edinburgh EH1 3YT

The Registrar General  
General Records Office  
Oxford House  
49-55 Chichester Street  
Belfast BT1 4HL

ONS will usually confirm that there is no case to pursue or that the matter has been referred to the police. Caseworkers may then contact the police to see whether any charges are to be brought.



## 8. GANGMASTERS LICENSING AUTHORITY (GLA)

The GLA has been created to regulate gangmasters (agencies which supply workers to various agricultural industries) to ensure that workers are treated fairly and in accordance with relevant legislation (e.g. national minimum wage). It is likely that the



UK Border Agency will hold information, in relation to illegal working, which will assist the GLA in its regulatory role. Likewise the GLA will hold information which might assist the UK Border Agency to tackle illegal working.

Section 19 of the Gangmasters Licensing Act 2004 provides a statutory gateway for disclosure of information to and from the GLA where the GLA require that information in order to perform their functions, or that information is required by the UK Border Agency for our functions in preventing illegal working.

The UK Border Agency is in the process of drafting an MOU for joint working with the GLA. If in doubt as to whether to disclose information to an officer of the GLA staff should contact either EPU or the IAPT.

## 9. LOCAL AUTHORITIES

Eligibility for several benefits or services administered by local authorities including housing benefit and student awards is linked to immigration status. It is important therefore to assist them in determining an applicant's immigration status. However, in order to ensure proper control of the information it is necessary for authorities to register in writing with the BES E&E and CPC named posts or postholders as the approved users of our enquiry facilities. If caseworkers receive requests for information from local authorities, they should firstly check with the BES E&E/CPC that the post or postholder is so registered. Once registered local authorities can make and receive responses to enquiries of the CPC over the telephone or via the form V-12 spreadsheet. The "call back" procedure will be employed if individual files are required in respect of an enquiry or a read over is requested.

Every time sensitive asylum claim details are disclosed to local authorities, it is done so in strictest confidence and marked **"Not for onward disclosure without first seeking the consent of the UK Border Agency "**.

The CPC will routinely provide local authorities via an A-CID (Asylum Case Information Database) report with cessation dates of asylum applicants' claims. The local authorities will then complete the sections of the report relevant to them and return it, allowing CPC to update HO records accordingly. Queries regarding cessations should be directed to the Data Matching Team who are based on the 8<sup>th</sup> floor West Wing in Block C.

Local authorities will also complete an annual spreadsheet for their current grant claim, in order to identify which, if any authorities NASS may need to financially reimburse. Any queries relating to this should be directed to NASS Finance.

CPC deals with asylum cases only and BES E&E with non-asylum enquiries.

Central Point of Contact (CPC)  
Integrated Casework Directorate  
Home Office  
8<sup>th</sup> Floor  
C Block  
Whitgift Centre  
Wellesley Road  
Croydon  
CR9 2AT

Business Enquiry Service Evidence and Enquiries  
Home Office

12<sup>th</sup> Floor Long Wing  
 Lunar House  
 Wellesley Road  
 Croydon  
 CR9 2BY

There is no central point for obtaining information from local authorities. Approaches may be made to those sections of individual authorities dealing with fraud, housing, housing benefit or student awards.

## 9.1 Nationality, Immigration and Asylum Act 2002

### Section 129

Section 129 came into force 30<sup>th</sup> July 2003 and places a new legal obligation on local authorities to comply with a request for information from the Home Office for the purpose of locating a specified individual whom the UK Border Agency reasonably suspects:

- has committed an immigration offence, and
- is, or has been, resident in the area of the local authority to whom the request is made.

This may include persons supported by local authorities under the transitional arrangements preceding the introduction of the national asylum support scheme, and persons who have in the past requested and/or received other forms of local authority support but whose immigration status is unknown to the local authority in question.

Further guidance on this new power including a template of the fax enquiry form can be found at **Annex B** to this section.

### Schedule 3

Schedule 3 of the 2002 Act, which came into force 9 January 2003 imposes a positive obligation on local authorities to inform the Home Office when a suspected relevant ineligible person applies for support or assistance under various statutory provisions. A relevant ineligible person is someone who is present in the United Kingdom in breach of the immigration laws or is someone who was previously but is no longer an asylum seeker and who has failed to co-operate with directions for their removal from the country.

For more information on Schedule 3 contact Enforcement & Compliant policy.

## 10. STUDENT AWARDS AGENCY (SCOTLAND)

Student awards in Scotland are administered centrally by the Student Awards Agency (SAA) rather than by local education authorities as is the case in England and Wales. Any enquiries received from the SAA must be dealt with in the same way as a request from a local authority in England and Wales (see above).

# **11.    DISCLOSURE BY OGDs TO IND OF INFORMATION CONCERNING EEA NATIONALS**

In order to determine whether an EEA national is exercising Treaty rights in the UK, arrangements are in place for the European Casework Group to contact the Department for Work and Pensions (DWP) or local authority to request details of whether the EEA national is in receipt of public funds.

# **12.    REQUESTS FOR PERSONAL INFORMATION FROM OFFICE OF THE IMMIGRATION SERVICES COMMISSIONER (OISC)**

Section 93 of the Immigration and Asylum Act 1999 enables the UK Border Agency and others to disclose information where necessary to assist OISC investigations, for example documents or information which would evidence representation by an unregistered adviser. This might include letters from the adviser on behalf of the applicant, or notes of interviews where the adviser attended with the applicant.

# **13.    INSTITUTIONS OF HIGHER AND FURTHER EDUCATION**

The UK Border Agency may disclose information to HE and FE institutions where it is relevant to the setting of fee status. All such enquires are made by the local authority education sections on behalf of the institutions and **not** directly by the institution itself. It is **not** appropriate to use the "call-back" procedure in this instance, all enquiries must be made in writing to BES E&E.

# **14.    UNIVERSITIES AND COLLEGES ADMISSIONS SERVICE (UCAS)**

UCAS may seek information from the UK Border Agency where they suspect that they are dealing with a fraudulent application for admission to a university or college. All requests for information must be made in writing by the registered UCAS postholder to BES E&E.

# **15.    UNSOLICITED DISCLOSURES**

Where caseworkers are dealing with individuals admitted on the condition or understanding that they will not have recourse to public funds, and where there is information which indicates that the individual is in receipt of a benefit or service which is listed in the Immigration Rules as a public fund, the caseworker should write to the Department, Government agency or local authority concerned with relevant details. Should such information emerge at an Appeal hearing, the file should be returned to the relevant caseworking group to notify the authority concerned.

If, for example, in the course of considering an application from a student it becomes apparent that he is in receipt of housing benefit from his local authority, then the caseworker should write to the local authority advising them of the student's immigration status and that he appears from our records to be in receipt of housing benefit.

In the case of benefits administered by the DWP (e.g. Income Support/Jobseekers Allowance, Working Family Tax Credit, Disability Living Allowance) the details should be passed to the local DWP Operational Intelligence Unit (see DWP section above).

In the case of benefits or services administered by local authorities (e.g. Housing Benefit or Housing and Homelessness assistance) caseworkers should write directly to the relevant section of the local authority concerned. If the address is not available on file, caseworkers should contact the local authorities section of BES E&E for assistance.

Such communication should not include any comment on the individual's entitlement to the benefit or service in question. It is entirely a matter for the benefit or service provider involved to consider whether or not the information provided is relevant to the claim. Caseworkers should use **Proforma A**, shown at the end of this section when writing to benefit and service providers in these circumstances.

## 16. DATA MATCHING

The term “data matching” essentially means the comparison of data stored on different computer systems by different data controllers, or by the same data controller in different contexts, for example DWP will regularly data match Income support records against Child Benefit records. Data matching exercises are mainly designed to assist in the detection of fraud.

The main aim of the comparison is the identification of anomalies and inconsistencies within a single set of data or between two or more sets. The sets of data will often be derived from application forms. The basic propositions are that fraud is a non-competitive issue; that those who commit fraud are likely to target not one but several organisations, and that information should be shared on a reciprocal basis.

Exercises of this sort raise privacy concerns and the question of compliance with both the Data Protection and Human Rights Acts, which **must** both be considered in each case at the earliest stage. If a data matching exercise is planned those responsible for managing the exercise should contact IAPT for advice in the first instance who will liaise with LAB if necessary.

**IDI        DISCLOSURE OF INFORMATION - PROFORMA A**

**IMMIGRATION AND NATIONALITY DIRECTORATE PROFORMA FOR DISCLOSURE OF INFORMATION TO:**

.....

(Insert relevant OGD, Government Agency, local authority)

Name.....

D.O.B.....    Nationality.....

Address.....

.....

.....

.....

HO Reference.....

Date of arrival in UK.....

National Insurance No. (if known).....

The above-named has recently applied to the UK Border Agency of the Home Office for an extension of stay.

He/she was admitted to the UK on the understanding/condition that he/she would not have recourse to public funds but information submitted in support of his/her application shows that he/she is currently in receipt of..... (insert relevant benefit/service).

This information is provided in the event that you wish to reconsider his/her entitlement to this benefit/service.

Signed:.....

Name (block capitals):.....

Location:.....

Telephone:.....    Fax:.....

Warrant No or UKBA Date Stamp: