

**CHAPTER 24
SECTION 5**

**DISCLOSURE OF INFORMATION
RELATING TO ASYLUM APPLICATIONS**

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1. INTRODUCTION

Where a request is made for information relating to an asylum applicant or application, in addition to the considerations set out in section 3 of this IDI ***“Disclosure to outside bodies”***, additional consideration must be given to whether disclosure may put the individual at risk. If an individual has made an asylum application, the details of that application are protected by our common law duty of confidentiality. Also by the very nature of their application for asylum to the UK, in many cases it would be contrary to the public interest to reveal details of that application as it could put the individual at risk. In any event, in many instances a sufficient degree of information can be disclosed to satisfy the enquirer without revealing that the individual has claimed asylum.

[Asylum Policy Unit (APU) has produced its own guidance on disclosure and confidentiality, which can be found in the Asylum Policy Instructions (API)]

2. DISCLOSURE IN ASYLUM CASES PRE-APPEAL

In the majority of pre-appeal cases where the asylum application is still under consideration, our obligations of confidentiality will usually prevent disclosure to a non-public body. The only exception to this is where there is an overriding public interest in the disclosure on the facts of the particular case, for example where the disclosure is necessary for the purposes of safeguarding national security, or where the disclosure is required in legal proceedings. If a caseworker has any doubts about whether or what information should be given they should seek advice from Asylum Policy Unit (APU). All such requests for personal data, which are not from the data subject, should be considered in line with the Freedom of Information Act ***[see chapter 25 for how to handle such requests]***. In many cases we will probably be able to refuse such requests under section 40 of the FOIA ***[see sections 4 and 12 of this IDI for more information regarding section 40 of FOIA]***.

3. DISCLOSURE IN ASYLUM AND OTHER CASES POST APPEAL

In cases where an application for asylum, or leave to enter or remain has been refused and the Appellate Authority has upheld that decision, this information can usually be considered to be in the public domain and therefore to that extent is no longer covered by our obligations of confidentiality. However, consideration must still be given to whether the disclosure of that information is necessary in the light of the enquiry received. If a caseworker has any doubts about whether or not information should be given they should seek advice from APU.

If an appeal hearing is heard "in camera" (i.e. hearing evidence in secret) then the matter has **not** passed into the public domain and details of that claim will not normally be disclosed, as the information will still be protected by our obligations of confidentiality. Any request for this information should be considered under FOIA however, in such cases we may be able to rely on sections 23, 24 or 38 of the FOIA **[see chapter 25]**. There will also be cases where the court/tribunal orders anonymity and this **must** be abided by.

4. **DISCLOSURE OF AN APPLICANT'S IMMIGRATION STATUS TO OTHER PUBLIC BODIES**

There will be instances when certain public bodies have a legitimate reason to request the immigration status of an individual or individuals i.e. the NHS to assist in determining whether or not an individual should be liable to charging for treatment, local authorities and DWP to establish benefit entitlement and the police for crime prevention and detection purposes. In these circumstances it is appropriate to disclose the required information with the caveat that the information remains confidential and is not further disclosed without first obtaining prior consent from the UK Border Agency to do so.

5. **EMPLOYMENT**

A request for confirmation that an asylum seeker/appellant has permission to work must be made by the applicant and **not** by the employer. If an employer requests this information we must tell them that the subject in question must write in himself or herself. **We may not give any information to an employer over the telephone. [see section 8 of this IDI].**

6. **"THE STATEMENT OF CONFIDENTIALITY" AND DISCLOSING INFORMATION OUTSIDE THE UK**

The Statement of Confidentiality on the Asylum SEF **[see section 1 of this IDI]** refers to the possibility of passing information about asylum seekers to "international organisations" without the applicant's express permission. In this instance, "international organisations" refers to recognised organisations concerned with the welfare of asylum seekers such as the UNHCR or the Red Cross or with managed returns such as the International Organisation for Migration (IOM). Information about individual claims should only be given on the understanding that the information is treated in the strictest confidence. The Data Protection Unit deals with all requests of this nature. If there is any doubt about whether or not information should be given to such an organisation advice should be sought from Asylum Policy Unit (APU).

The Statement of Confidentiality also makes mention of our right to pass information to asylum authorities in other countries which may be responsible for considering a claim. This includes the transfer of information under the Dublin Regulation to other EU Member States.

6.1. “Dublin II” Regulation

The provisions of the Dublin II Regulation (EC) No 343/2003 replaced those provided by the Dublin Convention on 1st September 2003. Articles 21(1) and (2) of Dublin II entitle us to request from, or pass to, Member States such information as is necessary to establish an applicant's identity and which State is responsible for examining the asylum application. Such information may include personal/family details, identity and travel papers, fingerprints (including those processed in accordance with the Eurodac Regulation (EC) No 2725/2000) places of residence, routes travelled, residence permits or visas issued by a member state, the place where the application was lodged and the date of any previous application including the current status and the decision where applicable. Third Country Unit (TCU) deals with all such cases, with European Asylum Policy Unit (EAPU) providing policy advice on the Regulation.

Provided it is necessary for the examination of the application for asylum, Article 21(3) of the Regulation permits the State identified using the Dublin II criteria as responsible for examining the claim to request another Participating State to disclose the grounds on which an asylum seeker based an application and any decisions taken concerning the applicant. The requested State may refuse to respond to the request if the communication of such information is likely to harm the essential interests of the State or the protection of the liberties and fundamental rights of the person concerned or others. In any event, communication of information requested on this particular basis shall be subject to the written approval of the applicant for asylum.

Sub-paragraphs 8-10 of Article 21 provide that information exchanged in this way must be accurate and up-to-date. If information is sent in error or is inaccurate the recipient State must be informed immediately. That State will be obliged to have it corrected in or erased from their records. The asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him. If he finds it has been processed in breach of the Regulation or the Data Protection Directive 95/46/EC he is entitled to have it corrected, blocked or erased. For this reason a record must be kept on file of the transmission and receipt of information exchanged. Any breach of the terms of Article 21 of the Regulation could leave the UK liable to proceedings in the European Court of Justice.

The UK Border Agency's general policy is not to pass on details about the basis of a person's claim to another State participating in the Dublin arrangements (Member States of the European Union, Iceland and Norway) without the express permission of the applicant, and not to pass on details of asylum applications to asylum authorities in countries not covered by the Dublin arrangements without the applicant's consent. However there may be exceptional cases in non-Dublin cases where it might be appropriate to pass on such details without consent. You must be satisfied that the disclosure without consent would be lawful, taking into account the considerations set out in Section 1 of this chapter in particular law of confidence, HRA and DPA considerations.

6.2. Serious criminal charges

It may be inappropriate to withhold the fact that the person is in the UK if, for example, the other country produces evidence that he or she is wanted on serious criminal charges and extradition proceedings are being contemplated. In each case, the decision to disclose should be not be taken at not less than HMI/senior caseworker level. Any decision to refuse to provide such information should be taken in consultation with the IAPT.

7. POWERS TO DISCLOSE FINGERPRINTS FOR THE PURPOSE OF RETURNING FAILED ASYLUM-SEEKERS

Section 13 of the 1999 Act only applies where a person "is to be removed from the UK to a country of which he is a national or citizen; but does not have a valid passport or other document establishing his identity and nationality or citizenship and permitting him to travel". In such circumstances, by subsection (2), "If the country to which the person is to be removed indicates that he will not be admitted to it unless identification data relating to him are provided by the Secretary of State, he may provide them with such data". For the purposes of the section, identification data is limited to fingerprints taken under section 141 of the 1999 and data collected in accordance with regulations made under section 144.

The section then provides that "For the purposes of paragraph 4(1) of Schedule 4 to the DPA 1998, the provision under this section of identification data is a transfer of personal data which is necessary for reasons of substantial public interest". This removes any barriers presented by the eighth Data Protection principle ***[For more information about the eighth Data Protection principle see section 9].***

However, in providing identification data, the Secretary of State must not disclose whether the person concerned has made a claim for asylum (subsection (3)). So when first contacting the country of which the person is a national or citizen, the fact that an asylum claim has been made - and the details of the claim itself - must not be disclosed. Likewise, those making contact have to ensure that the fact that an asylum claim has been made is not disclosed when providing the identification data.