

Disclosure of information policy and procedure
(As provided for under the Immigration and Asylum Act 1999)
Office of the Immigration Services Commissioner

Policy:

1. Purpose

- 1.1 This policy sets out how the OISC will deal with requests for information about immigration advisers from:
- members of the public
 - advisers and solicitors.
- 1.2 This policy does not cover the dissemination of intelligence information to statutory UK law enforcement agencies, the security and intelligence services, other non statutory law enforcement prosecuting agencies, and organisations with which the OISC has a memorandum of understanding ie the Designated Professional Bodies. This is covered in the OISC Code Of Practice on the Recording and Dissemination of Intelligence Information. All enquiries falling in to this category should be referred to the OISC Intelligence Section.
- 1.3 This policy does not deal with media enquiries. These are covered in the media protocol. All enquiries falling in to this category should be referred to the OISC Communications Team.
- 1.4 In drafting this policy regard has been given to OISC obligations under the Freedom of Information Act 2000 and the Data Protection Act 1998.

2. The Commissioner's Duties and Functions

- 2.1 The provisions of s.93 of the Act relate to the provision of information to and by the OISC.
- 2.2 No enactment or rule of law prohibits a person from providing the Commissioner with information that is necessary to discharge his functions (s.93 (1)).
- 2.3 No **relevant person** may at any time disclose information which-
- (a) has been obtained by, or given to, the Commissioner under or for the purposes of the Act,
 - (b) relates to an identified or identifiable individual or business, and
 - (c) is not at that time, and has not previously been, available to the public from other sources

Unless the disclosure is made with **lawful authority** (s.93(2)).

- 2.4 A **relevant person** means a person who is or has been-

- (a) the Commissioner
 - (b) a member of the Commissioner's staff his staff
 - (c) an agent of the Commissioner.
- 2.5 For the purposes of (2) a disclosure is made with **lawful authority** only if, and to the extent that:
- (a) it is made with the consent of the individual or the person for the time being carrying on the business
 - (b) it is made for the purposes of, and is necessary for, **the discharge of any of the Commissioner's functions** under this Act or any Community obligation of the Commissioner
 - (c) it is made for the purposes of any civil or criminal proceedings arising under or by virtue of this Part, or otherwise
 - (d) **having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest** (s. 93(3)).
- 2.6 The Commissioner, his staff, or his agent, will be guilty of an offence if s/he recklessly discloses information in contravention of (s.93(2)).

3. The Commissioner's duties and functions

- 3.1.1 It follows from the above that in order to establish whether the OISC may disclose information regard must be had to the Commissioner's functions, community obligations, and the public interest.
- 3.2 The relevant functions of the Commissioner are set out in part V and schedule 5 of the Act.
- 3.3 It is a general duty of the Commissioner to promote good practice amongst those who provide immigration advice or services.
- 3.4 The Commissioner:
- Has the regulatory functions set out in part 1 of sch. 5 to the Act, and
 - He must exercise his functions to ensure that those who provide immigration advice or services are fit and competent, and fulfil the related requirements of s.83(5) of the Act;
 - Must arrange for the publication of information about his functions and may give advice about these;
 - Must arrange for publications of information about his functions and may give advice about these;
 - Must prepare a register of those he has registered or to whom he has issued a certificate of exemption;
 - Must review the list of Designated Professional Bodies (DPBs) listed at s.86 of the Act and report to the Secretary of State if he considers that a DPB is failing to provide effective regulation;
 - Must set up a complaints scheme to deal with relevant complaints (Para. 5 of sch. 5), including those made about members of DPBs

4. The OISC's Duty to Disclose Information

- 4.1 As a responsible regulator it would arguably be negligent and against the purpose of the OISC's regulatory and complaints scheme if it did not disclose adverse information relating to the quality of advice provided by an adviser.
- 4.2 This argument is supported by the provisions of s.93 of the Act.
- 4.3 In responding to requests for information regard will be had 3.1 above.
- 4.4 The OISC will generally only respond to requests for information received in writing. Responses will be authorised by OISC staff at Deputy Team Manager level or above, will be confirmed in writing, and will be based on fact (see Disclosure of Information Procedure).

Procedure:

1. Purpose

- 1.1 This Procedure sets out how the OISC will respond to requests for information in connection with immigration advisers from:
 - Members of the public
 - Immigration advisers and Solicitors
- 1.2 It should be read in connection with the Disclosure of Information Policy.

2. Situations to which this procedure applies

- 2.1 This procedure applies to enquiries about advisers/ organisations that have applied for exemption (and to withdrawals of exemption), for registration and continued registration and the application:
 - is under consideration
 - has been refused and no appeal lodged
 - has have been refused, an appeal lodged with ImSet but not determined
 - has been refused, appealed, and determined by ImSet
 - has been withdrawn;

and to situations where:

- advisers/organisations have been authorised at a lower OISC competence level than that for which it applied

- 2.2 This procedure applies to enquiries advisers/organisations where a complaint:
- is under investigation
 - has been determined by the OISC and no appeal lodged
 - has been determined by the OISC, an appeal lodged and the appeal is pending
 - has been determined by the OISC, an appeal and the appeal has been determined by ImSet
 - has resulted in a charge which is pending before ImSet
 - has resulted in ImSet directing the restriction, prohibition, or suspension from providing immigration advice and services
- 2.3 Other situations may arise for which this procedure is relevant.
- 2.4 Enquiries may arise in a variety of situations including:
- Immigration advisers and solicitors enquiring about supervising advisers whose application for registration the OISC has refused
 - Immigration advisers, solicitors, staff at support agencies who query the quality of advice previously provided
 - Members of the public/recipients of immigration advice who query the quality of advice provided by an adviser

3. Procedure

- 3.1 All OISC staff may confirm, in writing or orally, whether an adviser/organisation is registered or exempted with the OISC. This information is available on the OISC website.
- 3.2 Where an enquirer seeks further information the enquirer should be asked to put this in writing explaining the reason for the request.
- 3.3 Responses should:
- Take in to account the points made at 3 and 4 of the Disclosure of Information Policy
 - Be based on fact
 - Be provided in writing

- Approved by a member of the senior management team or a deputy team leader
- Be made in a timely manner, bearing in mind the urgency of the request