

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2013

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

Decision (including any steps ordered)

1. The complainant has requested information about dependency and primary carers in relation to immigration.
2. The Commissioner's decision is that the Home Office has applied section 14(1) appropriately.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 30 April 2013, the complainant wrote to the Home Office (HO) and requested information in the following terms:

"I note the following: Regulation 15A(7) confirms that definition of a primary carer for the purpose of regulation 15(A)(2). The definition requires that the applicant is:

a) a direct member or legal guardian of the person from whom they claim a derivative right, and

b) is the person who

*i) has primary responsibility for that person's care ****OR**** (emphasis added) ii) shares equally the responsibility for that person's care with one other person who is not an exempt person.*

Regulation 15A(8) confirms that financial support alone will not bring a person within the definition of primary carer for the purposes of the Regulations. Those solely providing financial assistance who have no day to day caring responsibilities do not benefit from the provision.

If the UKBA does not consider financial dependency as a main form of dependency what does constitute "dependency".

Can you please provide me with any guidance issued to any section of UKBA/UK Visa Service as to how a person's dependency might be established for the purposes for any type of application currently being processed within UKBA.

I am sure there has been guidance given to UKBA staff in some form (training seminars etc perhaps?) as to how a persons [sic] dependency could well be evidenced for the purpose of an application to the Home Office."

5. The HO responded on 7 May 2013 asking the complainant for clarification as to whether he was seeking information specifically in relation to Zambrano¹ and applications for derivative residence cards made under regulation 15A of the Immigration (European Economic Area) Regulations; or information relating to all immigration categories where there is a requirement to be 'dependent'.

6. The complainant responded on the same day as follows:

"Lets [sic] go back to April 30th, and read my message and FOI request. ARE YOU SERIOUSLY GOING TO ATTEMPT TO USE A SEC 1(3) GET OUT USING THAT INFORMATION REQUEST? My original request included the line: Can you please provide me with any guidance issued to any section of UKBA/UK Visa Service as to how a person's dependency might be established for the purposes for any type of application currently being processed within the UKBA. Key words being 'for any type of application.' Therefore clarification DOES NOT NEED PROVIDING ...Surely UKBA staff can grasp the concept that the test quoted also equates to your 'clarification request' or information relating to all immigration categories where there is a requirement to be 'dependent'? I therefore expect a response by the previously established deadline!"

¹ This is a case in which it was held that parents of a child who is a national of a Member State must be granted the right to work and the right to residence in that Member State.

7. On 13 June 2013 the complainant requested an internal review of the HO's handling of his request.
8. On 19 June 2013 the HO contacted the complainant about his clarification of 7 May 2013 and explained that it was applying 14(1) to the request.
9. On 20 June 2013 the HO responded to the complainant's request for an internal review about the length of time taken to respond to his request. The HO acknowledged that it had breached section 10(1) of the FOIA as it had not responded to the complainant within 20 working days.
10. On 27 June 2013 the complainant requested an internal review of the HO's response of 19 June 2013. On 9 July 2013 the HO confirmed that it had carried out an internal review, which upheld its application of section 14(1).

Scope of the case

11. The complainant contacted the Commissioner on 6 June 2013 to complain about the way his request for information had been handled.
12. The Commissioner will investigate the HO's application of section 14(1) and the length of time taken to handle the complainant's request of 7 May 2013.

Reasons for decision

Section 14 – Vexatious Requests

13. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
14. The term "vexatious" is not defined within FOIA. However, it has been considered in the recent First-tier Tribunal (the tribunal) case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. The tribunal concluded that the term could be defined as "*manifestly unjustified, inappropriate or improper use of a formal procedure*".
15. The *Dransfield* case identified four factors that are likely to be present in vexatious requests, although it noted that this list was not intended to be exhaustive or a formulaic checklist:

- the burden imposed by the request (on the public authority and its staff);
 - the motive of the requester;
 - harassment or distress caused to staff;
 - the lack of value or serious purpose to the request.
16. The tribunal also recommended that anyone considering whether a request could be considered vexatious should take a broad “holistic” approach and consider any other factors that are relevant to the request. It also confirmed that a single factor could be appropriate to refuse a request if the weight of evidence for it was sufficient.

Burden imposed by request

17. The Commissioner’s guidance on section 14 (*Dealing with vexatious requests (section 14)*) states that:

“a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority’s resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden”.

18. The guidance also states that a requester’s past pattern of behaviour may be a relevant consideration. For instance, if a public authority’s experience of dealing with a requester previously suggests that they are unlikely to be satisfied with any response and will submit further follow-up correspondence, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.

19. The *Dransfield* tribunal also said:

“Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen’s right under Section 1(1)...the purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA”.

20. The HO also pointed to another statement of the tribunal in support of its application of section 14(1):

“There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately value judgements to whether

the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”.

21. The HO explained that when applying section 14(1) to the present request, as well as considering the *Dransfield* ruling, it had also considered the Commissioner’s guidance on section 14. The HO explained that it considered that the crucial indicators in relation to the complainant’s request are: burden on the authority, unreasonable persistence, frequent or overlapping requests and scattergun approach.

22. The HO also referred to the Commissioner’s guidance paragraph 56 which states:

“A request which would normally not be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority’s resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden”.

23. The HO also pointed to paragraph 57 of the Commissioner’s guidance, which states:

“... if the authority’s experience of dealing with his previous requests suggests that he won’t be satisfied with any responses and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.”

24. The HO provided the Commissioner with a spreadsheet showing the requests it had received from the complainant. The HO explained that it had applied section 14(1) to the request of 7 May 2013 because, between 29 January and 7 May 2013, it had received approximately 50 requests from the complainant relating to immigration issues. Furthermore, the HO explained that it appeared that the requests were related to the complainant’s wife not being granted leave to stay in the UK. The HO also explained that the complainant had his own website, on which he discussed his wife’s immigration status.

25. The Commissioner notes that on 8 April 2013 the HO received four requests from the complainant, all either directly or indirectly related to immigration issues. For example, one of the requests referred to a consultation document regarding legal aid being removed. The

complainant provided the website address which showed that the document covered fee remission and immigration; he then went on to request all of the information held by the HO. Furthermore, the Commissioner notes that on 9 April 2013, the HO received seven more requests from the complainant, all related to immigration.

26. The HO explained that the requests received were not straightforward, often complex and that the staff who dealt with immigration matters were already under pressure from their normal workload. Furthermore, the HO stated that it could not justify the extent to which the staff were being diverted from their core duties to deal with the complainant's requests.
27. It is important to note that it is the request which is deemed as 'vexatious' not the requester. FOIA is considered to be applicant and purpose blind. However, this does not mean that a public authority cannot take into account the wider context in which a request is made and any evidence the requester volunteers about the purpose behind the request.
28. The HO explained that the complainant's wife had not been granted leave to stay in the UK. It acknowledged that the complainant could use the FOIA to try to obtain information which would help him understand the decision or enable him to challenge it. The HO also confirmed that it had provided the complainant with guidance in response to earlier requests. The HO argued that the number and nature of the complainant's requests had become such that any legitimate purpose has been exceeded. The HO also argued that the FOIA was being used disproportionately. Furthermore, the HO pointed out that if the complainant (or his wife) objected to a decision taken with regard to his wife's status in the UK, there are appeal procedures and avenues which they could pursue.
29. The HO also explained that it considered that, in line with the guidance, the complainant's requests were frequent and/or overlapping.² It explained that between 2 and 8 April 2013 it had received four requests for legislation and guidance regarding Zambrano from the complainant. Furthermore, on 22 and 29 April 2013 the HO had also received a further two requests on the same issues.

² The Commissioner's guidance on section 14 describes frequent or overlapping requests as: "*The requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquires.*"

30. The HO confirmed that it had received nine requests from the complainant in April 2013 relating to immigration legislation, before it had had the opportunity to respond to outstanding requests. The HO argued that the pattern of the complainant's requests appeared to take on a vexatious nature. The Commissioner also notes that during the time period in question the complainant was also requesting internal reviews.
31. The Commissioner has considered all of the above. Whilst he understands that the complainant has concerns about his wife's immigration status, the Commissioner also acknowledges that there are appeal procedures that can be pursued.

Value or serious purpose of request

32. The HO explained that, although the complainant could make requests for information, it is clear that his primary aim is to reverse the decision that his wife is not entitled to stay in the UK. The HO argued that the number and nature of the complainant's requests have become such that any legitimate purpose has been exceeded and that the FOIA is being used by the complainant disproportionately.
33. The HO also explained that the complainant has posted an annotation on the 'WhatDoTheyKnow' site in which, with regard to his wife's visa, he states that his messages and emails were mostly drivel but he hoped that his whining would help somebody. The HO explained that whilst it did not wish to read too much into this statement and it was not suggesting that the complainant was saying that his FOIA requests were mostly drivel, it could be seen as an acknowledgment by the complainant that he was adopting rather a scattergun approach.³

Conclusion

34. The Commissioner has considered the arguments put forward, together with the context in which the request was made and the evidence supplied. He is satisfied that the complainant's requests have placed a significant burden upon the HO's resources, not least because they have been frequent and overlapping.

³ The Commissioner's guidance on section 14 states: "*The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.*"

35. The Commissioner is also satisfied that whilst the complainant's concerns are of a serious nature, there are other more appropriate avenues for him to pursue regarding his wife's immigration status in the UK.
36. The Commissioner is therefore satisfied that the HO has applied section 14(1) appropriately to the request of 7 May 2013.

Sections 1 and 10

37. Section 1(3) provides that where a public authority reasonably requires more information to identify and locate the requested information and has let the applicant know this, an authority is not obliged to comply with the request until it has received the clarified information.
38. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt*".
39. The Commissioner notes that initially the complainant submitted a request on 30 April 2013. On 7 May 2013, the HO requested clarification of the request and the complainant responded on the same day.
40. The Commissioner notes that in response to the request of 7 May 2013, in order for the HO to have complied with section 10(1) it should have responded by 4 June 2013, but in fact did not respond until 19 June 2013.
41. The Commissioner considers that the HO has therefore breached section 10(1). However, he is aware that the complainant has made approximately 50 requests for information to the HO between January 2103 and May 2013. The Commissioner also notes that he has found the present request to be vexatious.

Right of appeal

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

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

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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

Jon Manners
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